IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

(1) HOBBY LOBBY STORES, INC.,
(2) MARDEL, INC.,
(3) DAVID GREEN,
(4) BARBARA GREEN,
(5) STEVE GREEN,
(6) MART GREEN, and
(7) DARSEE LETT,

Plaintiffs,

v.

(1) KATHLEEN SEBELIUS, Secretary of the United States Department of Health and Human Services,
(2) UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,
(3) HILDA SOLIS, Secretary of the United States Department of Labor,
(4) UNITED STATES DEPARTMENT OF LABOR,
(5) TIMOTHY GEITHNER, Secretary of the United States Department of the Treasury, and
(6) UNITED STATES DEPARTMENT OF THE TREASURY,

Defendants.

Civil Action No. CIV-12-1000-HE

VERIFIED COMPLAINT

JURY DEMANDED

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Plaintiffs Hobby Lobby Stores, Inc., Mardel, Inc., David Green, Barbara Green, Steve Green, Mart Green, and Darsee Lett, by and through their attorneys, allege and state as follows:

NATURE OF THE ACTION

1. This is a challenge to regulations issued under the 2010 Patient Protection and Affordable Care Act that would force religiously-motivated business owners like Plaintiffs to violate their faith under threat of millions of dollars in fines.

2. Plaintiffs David Green, Barbara Green, Steve Green, Mart Green, and Darsee Lett ("the Green family") are committed evangelical Christians. Through various trusts, they own and operate plaintiff Hobby Lobby Stores, Inc. ("Hobby Lobby"), a privately held retail business headquartered in Oklahoma City. Hobby Lobby currently operates over 500 stores in over 40 states and has over 13,000 full-time employees.

3. Through various trusts, the Green family also owns and operates plaintiff Mardel, Inc. ("Mardel"), a privately held bookstore and education company headquartered in Hobby Lobby's Oklahoma City complex that sells a variety of Christian-themed materials. Mardel currently operates 35 stores in 7 states and has 372 full-time employees.

4. Unless context indicates otherwise, "Plaintiffs" refers collectively to the Green family, Hobby Lobby, and Mardel.

5. The Green family believes they are obligated to run their businesses in accordance with their faith. Commitment to Jesus Christ and to Biblical principles is what gives their business endeavors meaning and purpose.

6. The Green family's business practices therefore reflect their Christian faith in unmistakable and concrete ways. For example, they employ full-time chaplains to meet their employees' spiritual and emotional needs. They pay all of their employees well above the minimum wage and provide them with excellent benefits. They monitor their merchandise, marketing, and operations to make sure all are consistent with their beliefs. They give millions of dollars from their profits to fund missionaries and ministries around the world. And, as is well known, they close all their stores on Sundays, even though they lose millions in annual sales by doing so.

7. The Green family's religious beliefs forbid them from participating in, providing access to, paying for, training others to engage in, or otherwise supporting abortion-causing drugs and devices.

8. The administrative rule at issue in this case ("the Mandate") runs roughshod over the Green family's religious beliefs, and the beliefs of millions of other Americans, by forcing them to provide health insurance coverage for abortion-inducing drugs and devices, as well as related education and counseling.

9. The Mandate illegally and unconstitutionally coerces the Green family to violate their deeply-held religious beliefs under threat of heavy fines, penalties, and

lawsuits. The Mandate also forces the Green family to facilitate government-dictated speech incompatible with their own speech and religious beliefs. Having to pay fines for the privilege of practicing one's religion or controlling one's own speech is alien to our American traditions of individual liberty, religious tolerance, and limited government. It is also illegal and unconstitutional.

10. The Mandate does not apply to everyone equally. The government has not required every insurance plan in the country to cover these services, but has instead exempted numerous persons and groups, often for reasons of commercial convenience. Millions of employers may escape the mandate because of the age of their plans or because of the number of people they employ. Certain non-profit religious organizations have been exempted from the mandate altogether, and others have been given extra time to comply with it. But the government refuses to give any accommodation whatsoever to families like the Greens, who simply want to run their businesses in accordance with their beliefs.

11. Defendants have no power to determine that businesses and business owners like the Greens deserve third-class protection for their religious faith. Religious freedom is the birthright of every American. It does not belong solely to those organizations Defendants have chosen to favor.

12. Defendants' actions therefore violate Plaintiffs' rights to freedom of religion, speech, and association as secured by the First and Fifth Amendments to the United

States Constitution and the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb *et seq.*

13. Furthermore, the Mandate is illegal because it was imposed by Defendants without prior notice or sufficient time for public comment, and otherwise violates the Administrative Procedure Act, 5 U.S.C. § 553.

14. Religious beliefs like those of the Green family concerning abortion are neither obscure nor unknown. In formulating and finalizing the Mandate, the government acted with full knowledge that the Mandate would run counter to beliefs like theirs, shared by millions of Americans. And yet the government not only refused to exempt objecting business owners like the Greens, but it allowed plans to exclude these services for a wide range of reasons *other than* religion. The Mandate can therefore be interpreted as nothing other than a deliberate attack on the religious beliefs of the Greens and millions of other Americans.

15. Plaintiffs therefore seek declaratory and injunctive relief against the Mandate.

JURISDICTION AND VENUE

16. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and § 1361. This action arises under the Constitution and laws of the United States. This Court has jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 2000bb-1.

17. Venue lies in this district pursuant to 28 U.S.C. § 1391(e). Plaintiffs reside in this district. A substantial part of the events or omissions giving rise to the claim occurred in this district.

IDENTIFICATION OF PARTIES

18. Plaintiff David Green founded Hobby Lobby in 1970 and remains its CEO. He is also a trustee of one or more of the trusts described in paragraphs 2 and 3 of this Complaint. He is a Christian and, from the beginning, has sought to run Hobby Lobby in harmony with God's laws and in a manner which brings glory to God.

19. Plaintiff Barbara Green is a trustee of one or more of the trusts described in paragraphs 2 and 3 of this Complaint. She is a Christian and, from the beginning, has sought to run Hobby Lobby in harmony with God's laws and in a manner which brings glory to God.

20. Plaintiff Steve Green is the President of Hobby Lobby and a trustee of one or more of the trusts described in paragraphs 2 and 3 of this Complaint. He is a Christian and, from the beginning, has sought to run Hobby Lobby in harmony with God's laws and in a manner which brings glory to God.

21. Plaintiff Mart Green is the Vice CEO of Hobby Lobby and the CEO of Mardel, a chain of education and supply stores providing Christian books and church supplies. He is also a trustee of one or more of the trusts described in paragraphs 2 and 3 of this Complaint. Mart is also founder of several Christian media companies and Chairman of

the Board of Oral Roberts University. He is a Christian and, from the beginning, has sought to run Hobby Lobby, Mardel, and his other business ventures in harmony with God's laws and in a manner which brings glory to God.

22. Plaintiff Darsee Lett is Vice-President of Hobby Lobby and trustee of one or more of the trusts described in paragraphs 2 and 3 of this Complaint. She is a Christian and, from the beginning, has sought to run Hobby Lobby in harmony with God's laws and in a manner which brings glory to God.

23. Hobby Lobby is a privately held, for-profit corporation located in Oklahoma City and organized under Oklahoma law. Hobby Lobby is not a church, an integrated auxiliary of a church, or a convention or association of churches as defined by 26 U.S.C. § 6033(a)(3)(A)(i). Hobby Lobby is not a religious order as defined by 26 U.S.C. § 6033(a)(3)(A)(iii). Nor is it a church or a convention or association of churches as defined by 26 U.S.C. § 414(e).

24. Mardel is a privately held, for-profit corporation located in Oklahoma City and organized under Oklahoma law. Mardel is not a church, an integrated auxiliary of a church, or a convention or association of churches as defined by 26 U.S.C. § 6033(a)(3)(A)(i). Mardel is not a religious order as defined by 26 U.S.C. § 6033(a)(3)(A)(iii). Nor is it a church or a convention or association of churches as defined by 26 U.S.C. § 414(e).

25. Defendants are appointed officials of the United States government and United States governmental agencies responsible for issuing the Mandate.

26. Defendant Kathleen Sebelius is the Secretary of the United States Department of Health and Human Services ("HHS"). In this capacity, she has responsibility for the operation and management of HHS. Sebelius is sued in her official capacity only.

27. Defendant HHS is an executive agency of the United States government and is responsible for the promulgation, administration and enforcement of the Mandate.

28. Defendant Hilda Solis is the Secretary of the United States Department of Labor. In this capacity, she has responsibility for the operation and management of the Department of Labor. Solis is sued in her official capacity only.

29. Defendant Department of Labor is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the Mandate.

30. Defendant Timothy Geithner is the Secretary of the Department of the Treasury. In this capacity, he has responsibility for the operation and management of the Department. Geithner is sued in his official capacity only.

31. Defendant Department of Treasury is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the Mandate.

FACTUAL ALLEGATIONS

I. The Green Family and Hobby Lobby.

32. Hobby Lobby began as Greco Products, a decorative frame company. In 1970, David Green started the business with a six hundred dollar bank loan, building hobby frames in a garage and selling them to other retailers.

33. As the business grew, David Green re-named the company Hobby Lobby and opened the first retail store in Oklahoma City in 1972. From the beginning, Hobby Lobby was a family business. David and Barbara worked in the store and packaged and shipped their frames to other retailers. Steve and Mart, in exchange for money to buy baseball cards, glued frames together at the family's kitchen table.

34. The store became successful. The Greens moved to a larger space, and then to an even larger one, and then began to open additional stores. They broadened their offerings to include a variety of art and craft supplies, home décor, and holiday decorations. Today, Hobby Lobby has grown into one of the nation's leading craft store chains, operating 514 stores in 41 states with 13,240 full-time employees.

35. Hobby Lobby has continued to expand and create new jobs, even during the recent economic downturn.

36. Hobby Lobby has always operated as a family business. David and Barbara Green did much of the work themselves in their first stores. As their children Steve, Mart, and Darsee grew older, the Greens introduced them to the business and trained them to

run a retail chain. Today, Steve is the President of Hobby Lobby, Darsee is Vice-President, and Mart is Vice CEO.

37. In 1981, Plaintiff Mart Green founded Mardel, a bookstore and educational supply company that specializes in Christian materials, such as Bibles, books, movies, apparel, church and educational supplies, and homeschool curricula. Mardel operates 35 stores in 7 states and has 372 employees.

38. The members of the Green family operate Hobby Lobby and Mardel through a management trust, which owns all of the voting stock of these companies. Each member of the Green family is a trustee of the management trust. By its own terms, this trust exists first and foremost "to honor God with all that has been entrusted" to the Green family and to "use the Green family assets to create, support, and leverage the efforts of Christian ministries." The trustees must sign a Trust Commitment, which among other things requires them to affirm the Green family statement of faith and to "regularly seek to maintain a close intimate walk with the Lord Jesus Christ by regularly investing time in His Word and prayer."

II. The Green Family's Religious Beliefs Related to Abortion-Causing Drugs and Devices.

39. Since the beginning, the Green family has operated Hobby Lobby according to their Christian faith. Christian beliefs and values inform their decisions and form the inspiration for their company. The family members use their profits to support Christian

charities and ministries around the world. They believe that God has blessed them so that they might bless others.

40. For example, David and Barbara Green signed the Giving Pledge, agreeing to donate the majority of their wealth to philanthropy. In this pledge, the Greens stated, "We honor the Lord in all we do by operating the company in a manner consistent with Biblical principles. From helping orphanages in faraway lands to helping ministries in America, Hobby Lobby has always been a tool for the Lord's work. For me and my family, charity equals ministry, which equals the Gospel of Jesus Christ."

41. Hobby Lobby bears the imprint of its owners' faith. As they explain on the company website, "The foundation of our business has been, and will continue to be strong values, and honoring the Lord in a manner consistent with Biblical principles."

42. Hobby Lobby's statement of purpose reads:

> In order to effectively serve our owners, employees, and customers the Board of Directors is committed to:
>
> > Honoring the Lord in all we do by operating the company in a manner consistent with Biblical principles.
> >
> > Offering our customers an exceptional selection and value.
> >
> > Serving our employees and their families by establishing a work environment and company policies that build character, strengthen individuals, and nurture families.
> >
> > Providing a return on the owners' investment, sharing the Lord's blessings with our employees, and investing in our community.

> We believe that it is by God's grace and provision that Hobby Lobby has endured. He has been faithful in the past, we trust Him for our future.

43. Hobby Lobby's Christian underpinnings are apparent to customers shopping in its stores. Among other things, the stores use a carefully managed music playlist which prominently features inspirational Christian songs. They do not stock gruesome or bloody Halloween decorations, nor risqué greeting cards. They carry religiously themed merchandise, particularly in their Christmas and Easter seasonal sections, which occupy a large portion of each store.

44. Furthermore, the Green family's religious beliefs forbid them from facilitating activities they regard as immoral or harmful. For instance, they refuse to sell shot glasses at Hobby Lobby. They once declined an offer from a liquor store to take over one of their building leases, because they did not want to facilitate alcohol use in the neighborhood around the store. Taking the liquor store's offer would have saved them hundreds of thousands of dollars a month. Similarly, the family refused to allow their trucks to "back-haul" beer shipments for a major distributor, even though the profits from doing so would have been substantial.

45. Perhaps the most well-known expression of the Greens' religious beliefs is the decision to close Hobby Lobby stores on Sundays. The Greens believe that employees should not be asked to regularly work on Sundays, so they can enjoy a day of rest and spend the day with their families. They made this decision because they believed it was the right thing to do, even though it initially cost them millions in lost revenues.

46. Consistent with the Green family's religious beliefs, Hobby Lobby stores are open no more than 66 hours per week. They close at 8 p.m. so that employees can spend the evening with their families. Again, the Greens know they might earn more if they stayed open later, but they believe it is more important to respect their employees and their families.

47. Every Christmas and Easter, Hobby Lobby takes out full-page ads in all newspapers in which it advertises. These ads celebrate the religious nature of the holidays and direct readers who would like to learn more, or are in need of spiritual guidance, to a site where they can download a free Bible and to the phone number of an outside ministry which provides spiritual counseling. In recent years, they have also taken out ads on the Fourth of July, celebrating the Christian beliefs of many of our nation's founders. They maintain an archive of those ads on the company website: http://www.hobbylobby.com/holiday_messages/holiday_messages.cfm.

48. Hobby Lobby has always served a diverse customer base, many of whom do not share the owners' religious beliefs. It strives to welcome and show respect to people of all religious faiths, or no faith at all. The Green family and their employees respond respectfully to criticism they have received for their beliefs about faith and business. The Greens believe it would be wrong to erase their faith from the company they operate.

49. Like Hobby Lobby, Mardel is a company run in accordance with the Green family's (and CEO Mart Green's) religious beliefs. Mardel is a bookstore and educational

supply company that specializes in Christian materials, such as Bibles, books, movies, apparel, church and educational supplies, and homeschool curricula. Mardel describes itself as "a faith-based company dedicated to renewing minds and transforming lives through the products we sell and the ministries we support." It gives 10% of its net profits to help print Bibles translated by Wycliffe Bible Translators. Mardel's 372 employees receive their health insurance coverage through Hobby Lobby's self-insured plans.

50. The Green family believes that they have a religious obligation to treat their employees fairly and with respect, and to compensate good work with good wages and benefits. Over the years, they have looked for opportunities to raise wages, and have long provided minimum salaries well above any national or regional minimum wage. Despite the recession, they have increased wages for full-time employees for the last four years in a row. The wages for Hobby Lobby's full-time employees start at 80% above the federal minimum wage.

51. The Green family also employs company chaplains to minister to employees' personal needs. They provide religiously-inspired financial management classes for employees seeking to improve their family finances. They provide an on-site health clinic for their Oklahoma City employees. They provide conflict and dispute resolution classes based on Biblical principles. Employees are also offered an option to resolve employment disputes through various means, including Christian conciliation. Hobby Lobby

welcomes employees of all faiths or no faith, and seeks to create a positive, family-friendly environment for its workers.

52. As part of their religious obligations, the Green family also provides excellent health insurance coverage to Hobby Lobby's and Mardel's employees through a self-insured plan. As in other aspects of the business, the Greens believe it is imperative that their employee benefits are consistent with their religious beliefs.

53. The Green family's religious beliefs prohibit them from deliberately providing insurance coverage for prescription drugs or devices inconsistent with their faith, in particular abortion-causing drugs and devices.

54. Hobby Lobby's insurance policies have long explicitly excluded—consistent with their religious beliefs—contraceptive devices that might cause abortions and pregnancy-termination drugs like RU-486.

55. Recently, after learning about the nationally prominent HHS mandate controversy, Hobby Lobby re-examined its insurance policies to ensure they continued to be consistent with its faith. During that re-examination, Hobby Lobby discovered that the formulary for its prescription drug policy included two drugs—Plan B and Ella—that could cause an abortion. Coverage of these drugs was not included knowingly or deliberately by the Green family. Such coverage is out of step with the rest of Hobby Lobby's policies, which explicitly exclude abortion-causing contraceptive devices and

pregnancy-termination drugs. Hobby Lobby therefore immediately excluded the inconsistent drugs from its policies.

56. The Green family also believes it would violate their faith to deliberately provide health insurance that would facilitate access to abortion-causing drugs and devices, even if those items were paid for by an insurer or a plan administrator and not by Hobby Lobby itself.

57. The Greens have no religious objection to providing coverage for non-abortion-causing contraceptive drugs and devices.

58. The Green family and Hobby Lobby have expended significant resources working with Hobby Lobby's insurers and plan administrators to ensure that its health insurance policies reflect their religious beliefs.

59. Before the Mandate was issued, Hobby Lobby made the decision not to retain grandfathered status under the Affordable Care Act. Neither its 2011 nor its 2012 plan materials included a notice of grandfather status. Therefore Hobby Lobby's insurance plan is not grandfathered. *See* 45 C.F.R. § 147.140(a)(1)(i), 26 C.F.R. § 54.9815-1251T(a)(1)(i); 29 C.F.R. § 2590.715-1251(a)(1)(i).

III. The Affordable Care Act

60. In March 2010, Congress passed, and President Obama signed into law, the Patient Protection and Affordable Care Act, Pub. L. 111-148 (March 23, 2010), and the

Health Care and Education Reconciliation Act, Pub. L. 111-152 (March 30, 2010), collectively known as the "Affordable Care Act."

61. The Affordable Care Act regulates the national health insurance market by directly regulating "group health plans" and "health insurance issuers."

62. The Act does not apply equally to all plans.

63. The Act does not apply equally to all insurers.

64. The Act does not apply equally to all individuals.

65. The Act applies differently to employers with fewer than 50 employees, not counting seasonal workers. 26 U.S.C. § 4980H(c)(2)(A).

66. According to the United States census, more than 20 million individual workers are employed by firms with fewer than 20 employees. http://www.census.gov/econ/smallbus.html. Employers with less than 50 employees would therefore employ an even higher number of workers.

67. Certain provisions of the Act do not apply equally to members of certain religious groups. *See, e.g.*, 26 U.S.C. §§ 5000A(d)(2)(a)(i) and (ii) (individual mandate does not apply to members of "recognized religious sect or division" that conscientiously objects to acceptance of public or private insurance funds); 26 U.S.C. § 5000A(d)(2)(b)(ii) (individual mandate does not apply to members of "health care sharing ministry" that meets certain criteria).

68. The Act's preventive care requirements do not apply to employers who provide so-called "grandfathered" health care plans.

69. Employers who follow HHS guidelines may continue to use grandfathered plans indefinitely.

70. HHS has predicted that a majority of large employers, employing more than 50 million Americans, will continue to use grandfathered plans through at least 2014, and that a third of small employers with between 50 and 100 employees may do likewise. http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html.

71. The Act is not generally applicable because it provides for numerous exemptions from its rules.

72. The Act is not neutral because some individuals and organizations, both secular and religious, enjoy exemptions from the law, while other religious individuals and organizations do not.

73. The Act creates a system of individualized exemptions.

74. The Department of Health and Human Services has the authority under the Act to grant compliance waivers to employers and other health insurance plan issuers ("HHS waivers").

75. HHS waivers release employers and other plan issuers from complying with the provisions of the Act.

76. HHS decides whether to grant waivers based on individualized waiver requests from particular employers and other health insurance plan issuers.

77. Upon information and belief, thousands of HHS waivers have been granted.

78. The Act is not neutral because some secular and religious groups and individuals have received statutory exceptions while other religious groups and individuals have not.

79. The Act is not neutral because some secular and religious groups and individuals have received HHS waivers while other religious groups and individuals have not.

80. The Act is not generally applicable because Defendants have granted numerous waivers from complying with its requirements.

81. The Act is not generally applicable because it does not apply equally to all individuals and plan issuers.

82. The Act is neither neutral nor generally applicable because Defendants have exempted certain religious employers, but not religious businesses and business-owners like Plaintiffs.

83. The Act is neither neutral nor generally applicable because Defendants have issued a "safe harbor" protecting certain non-exempt non-profit religious objectors from the Mandate, but not religious businesses and business-owners like Plaintiffs.

84. The Act is neither neutral nor generally applicable because Defendants have stated an intention to make certain non-exempt non-profit religious objectors effectively exempt through the ANPRM (described below), but not religious businesses and business-owners like Plaintiffs.

85. Defendants' waiver practices create a system of individualized exemptions.

IV. The Preventive Care Mandate

86. One of the provisions of the Affordable Care Act mandates that health plans "provide coverage for and shall not impose any cost sharing requirements for . . . with respect to women, such additional preventive care and screenings . . . as provided for in comprehensive guidelines supported by the Health Resources and Services Administration," and directs the Secretary of Health and Human Services to determine what would constitute "preventative care" under the mandate. 42 U.S.C § 300gg–13(a)(4).

87. On July 19, 2010, HHS, along with the Department of Treasury and the Department of Labor, published an interim final rule under the Affordable Care Act. 75 Fed. Reg. 41726 (2010).[1] The interim final rule required providers of group health insurance to cover preventive care for women as provided in guidelines to be published

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[1] For ease of reading, references to "HHS" in this Complaint are to all three Departments.

by the Health Resources and Services Administration at a later date. 75 Fed. Reg. 41759 (2010).

88. The Mandate also requires group health care plans and issuers to provide education and counseling for all women beneficiaries with reproductive capacity.

89. The Mandate went into effect immediately as an "interim final rule."

90. HHS accepted public comments to the 2010 interim final rule until September 17, 2010. A number of groups filed comments warning of the potential conscience implications of requiring religious individuals and groups to pay for certain kinds of health care, including contraception, sterilization, and abortion.

91. HHS directed a private health policy organization, the Institute of Medicine ("IOM"), to suggest a list of recommended guidelines describing which drugs, procedures, and services should be covered by all health plans as preventive care for women. *See* http://www.hrsa.gov/womensguidelines.

92. In developing its guidelines, IOM invited a select number of groups to make presentations on the preventive care that should be mandated by all health plans. These were the Guttmacher Institute, the American Congress of Obstetricians and Gynecologists (ACOG), Prof. John Santelli, a Senior Fellow at the Guttmacher Institute, the National Women's Law Center, National Women's Health Network, Planned Parenthood Federation of America and Prof. Sara Rosenbaum, a proponent of government-funded abortion.

93. No religious groups or other groups that oppose government-mandated coverage of contraception, sterilization, abortion, and related education and counseling were among the invited presenters.

94. One year after the first interim final rule was published, on July 19, 2011, the IOM published its recommendations. It recommended that the preventive services include "[a]ll Food and Drug Administration approved contraceptive methods [and] sterilization procedures." Institute of Medicine, *Clinical Preventive Services for Women: Closing the Gaps* (July 19, 2011).

95. FDA-approved contraceptive methods include birth-control pills; prescription contraceptive devices and injections; levonorgestrel, also known as the "morning-after pill" or "Plan B"; and ulipristal, also known as "Ella" or the "week-after pill"; and other drugs, devices, and procedures. The FDA birth control guide specifically notes that Plan B and Ella may work by preventing "attachment (implantation)" of a fertilized egg to a woman's uterus. *See* http://www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM282014.pdf.

96. Thirteen days later, on August 1, 2011, HRSA issued guidelines adopting the IOM recommendations. *See* http://www.hrsa.gov/womensguidelines. On the same day HHS, the Department of Labor, and the Department of Treasury promulgated an amended interim final rule which reiterated the Mandate and added a narrow exemption

for "religious employer[s]." 76 Fed. Reg. 46621 (published Aug. 3, 2011); 45 C.F.R. § 147.130.

97. HHS did not take into account the concerns of religious organizations and individuals in the comments submitted before the Mandate was issued.

98. The Mandate was unresponsive to the concerns stated in the comments submitted by religious organizations and individuals.

99. When it issued the Mandate, HHS requested comments from the public by September 30, 2011, and indicated that comments would be available online.

100. Upon information and belief, over 100,000 comments were submitted against the Mandate and its narrow "religious employer" exemption.

101. On October 5, 2011, six days after the comment period ended, Defendant Sebelius gave a speech at a fundraiser for NARAL Pro-Choice America. She told the assembled crowd that "we are in a war."

102. The Mandate fails to take into account the statutory and constitutional conscience rights of religious individuals like the Green family, even though those rights were raised in the public comments.

103. The Mandate requires that Plaintiffs provide coverage or access to coverage for abortion-causing drugs and related education and counseling against their consciences in a manner that is contrary to law.

104. The Mandate constitutes government-imposed pressure and coercion on Plaintiffs to change or violate their religious beliefs.

105. The Mandate exposes Plaintiffs to substantial fines and other penalties and pressures for refusal to change or violate their religious beliefs.

106. The Mandate forces Plaintiffs to provide coverage or access to coverage for abortion-causing drugs and devices, including Plan B and Ella, in violation of Plaintiffs' religious beliefs.

107. Plaintiffs have a sincere religious objection to providing coverage for Plan B and Ella since they believe those drugs could prevent a human embryo—which they understand to include a fertilized egg before it implants in the uterus—from implanting in the wall of the uterus, causing the death of the embryo.

108. Plaintiffs have a sincere religious objection to providing coverage for certain contraceptive intrauterine devices or "IUDs" since they believe those devices could prevent a human embryo from implanting in the wall of the uterus, causing the death of the embryo.

109. Plaintiffs consider the prevention by artificial means of the implantation of a human embryo to be an abortion.

110. Plaintiffs believe that Plan B, Ella and certain IUDs can cause the death of the embryo.

111. Plan B can prevent the implantation of a human embryo in the wall of the uterus.

112. Ella can prevent the implantation of a human embryo in the wall of the uterus.

113. Certain IUDs can prevent the implantation of a human embryo in the wall of the uterus.

114. Plan B, Ella, and certain IUDs can cause the death of the embryo.

115. The use of artificial means to prevent the implantation of a human embryo in the wall of the uterus constitutes an "abortion" as that term is used in federal law.

116. The use of artificial means to cause the death of a human embryo constitutes an "abortion" as that term is used in federal law.

117. The Mandate forces Plaintiffs to provide insurance coverage or access to insurance coverage for abortion-causing drugs and devices, including Plan B and Ella, regardless of the ability of insured persons to obtain these drugs from other sources.

118. The Mandate forces Plaintiffs to provide insurance coverage or access to insurance coverage for education and counseling concerning abortion-causing drugs and devices that directly conflicts with their religious beliefs and teachings.

119. Providing this counseling and education is incompatible and irreconcilable with Plaintiffs' express messages and speech.

120. The Mandate forces Plaintiffs to choose between violating their religious beliefs or terminating employee health insurance coverage and incurring substantial fines.

121. Group health plans and issuers will be subject to the Mandate starting with the first insurance plan year that begins on or after August 1, 2012.

122. Plaintiffs have already had to devote significant institutional resources, including both staff time and funds, to determining how to respond to the Mandate. Plaintiffs anticipate continuing to make such expenditures of time and money up until the time that the Mandate goes into effect.

V. The Narrow and Discretionary Religious Employer Exemption

123. The Mandate indicates that that the Health Resources and Services Administration ("HRSA") "may" grant religious exemptions to certain religious employers. 45 C.F.R. § 147.130(a)(iv)(A). Among other things, those employers must be "a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." 45 C.F.R. § 147.130(a)(iv)(B).

124. As a for-profit company, Hobby Lobby does not qualify for this exemption.

125. After public outcry over the Mandate, Defendant Sebelius announced that "[n]onprofit employers who, based on religious beliefs, do not currently provide contraceptive coverage in their insurance plan, will be provided an additional year, until August 1, 2013, to comply with the new law," on the condition that those employers certify they qualify for the extension.

126. Hobby Lobby does not qualify for this "safe harbor," since it is a for-profit company.[2]

127. On February 10, 2012, President Obama held a press conference at which he announced an intention to initiate, at some unspecified future date, a separate rulemaking process that would work toward creating a different insurer-based mandate. This promised mandate would, the President stated, attempt to take into account the kinds of religious objections voiced against the original Mandate contained in the interim final rule.

128. On February 15, 2012, Defendants adopted as final, "without change," the narrow "religious employer" exemption. 77 Fed. Reg. 8725, 8727.

129. On March 16, 2012, Defendants issued an Advance Notice of Proposed Rulemaking ("ANPRM"). The ANPRM announced Defendants' intention to create an "accommodation" for non-exempt religious organizations under which Defendants would require a health insurance issuer (or third party administrator) to provide coverage for these drugs and services—without cost sharing and without charge—to employees

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[2] *See* HHS, Guidance on Temporary Enforcement Safe Harbor, U.S. DEP'T OF HEALTH & HUMAN SERVS. (Feb. 10, 2012), at 3, *available at* http://cciio.cms.gov/resources/files/Files2/02102012/20120210-Preventive-Services-Bulletin.pdf (last visited Sept. 10, 2012). The government recently expanded the safe harbor, but it still does not include for-profit businesses like Plaintiffs. *See* HHS, Guidance on Temporary Enforcement Safe Harbor, U.S. DEP'T OF HEALTH & HUMAN SERVS. (August 15, 2012), *available at* http://cciio.cms.gov/resources/files/prev-services-guidance-08152012.pdf (last visited Sept. 10, 2012).

covered under the organization's health plan. The ANPRM solicited public comments on structuring the proposed accommodation, and announced Defendants' intention to finalize an accommodation by the end of the Safe Harbor period. *See* https://s3.amazonaws.com/public-inspection.federalregister.gov/2012-06689.pdf (published on March 21, 2012).

130. The ANPRM did not announce any intention to alter the Mandate or its narrow "religious employer" exemption, which was made "final, without change" on February 15, 2012. All the ANPRM's suggestions for future rulemaking are limited to non-profit religious organizations. The government has made no promises, either in the ANPRM or anywhere else, to provide protection for religious business owners like Plaintiffs.

131. The plan year for Hobby Lobby's and Mardel's employee insurance plan begins on January 1 of each year.

132. The Mandate takes effect against Hobby Lobby's and Mardel's employee insurance plan on January 1, 2013.

133. On January 1, Plaintiffs will face an unconscionable choice: either violate the law, or violate their faith.

VI. The Mandate's Effect on the Plaintiffs and the Need for Immediate Relief

134. The Mandate constitutes government-imposed pressure on Plaintiffs to act contrary to their religious beliefs.

135. The Mandate exposes Plaintiffs to enormous fines and other penalties and pressures if it refuses to comply.

136. Hobby Lobby has about 13,240 full-time employees as of September 1, 2012.

137. Mardel has about 372 full-time employees as of September 1, 2012.

138. The Mandate imposes a burden on Plaintiffs' employee recruitment and retention efforts by creating uncertainty as to how they will be able to offer health insurance beyond 2012.

139. The Mandate places Plaintiffs at a competitive disadvantage in its efforts to recruit and retain employees.

140. Plaintiffs are planning now for the 2013 insurance plan year.

141. Every fall, Plaintiffs work with their insurance plan administrators to set up the plans for the coming year. The process is time consuming: Plaintiffs' HR department must work with its administrators on plan changes and on the production and distribution of plan materials and employee insurance cards.

142. Plaintiffs need immediate relief from the Mandate in order to arrange for and continue providing employee health insurance to their employees. Delay could lead to a lapse in coverage, placing the health and well-being of thousands of employees and their families in jeopardy. Denial of immediate relief will force Plaintiffs to choose between their religious beliefs and the prospect of crippling fines, regulatory penalties, and lawsuits.

143. The consequences for Plaintiffs' employees would be severe. Thousands of families rely on Plaintiffs' insurance plans.

144. The consequences for Plaintiffs' businesses would be enormous. For example, with over 13,000 full-time employees, Hobby Lobby faces fines of about $26 million dollars per year if it drops employee insurance altogether, and additional fines of about $1.3 million per *day* if it chooses to offer insurance that does not include all of the mandated drugs and services. Plaintiffs will be subject to those penalties on January 1, 2013.

CLAIMS

COUNT I

Violation of the Religious Freedom Restoration Act Substantial Burden

145. Plaintiffs incorporate by reference all preceding paragraphs.

146. Plaintiffs' sincerely held religious beliefs prohibit them from providing coverage or access to coverage for abortion-causing drugs or devices or related education and counseling. Plaintiffs' compliance with these beliefs is a religious exercise.

147. The Mandate creates government-imposed coercive pressure on Plaintiffs to change or violate their religious beliefs.

148. The Mandate chills Plaintiffs' religious exercise.

149. The Mandate exposes Plaintiffs to substantial fines for their religious exercise.

150. The Mandate exposes Plaintiffs to substantial competitive disadvantages, in that they may no longer be permitted to offer health insurance.

151. The Mandate imposes a substantial burden on Plaintiffs' religious exercise.

152. The Mandate furthers no compelling governmental interest.

153. The Mandate is not narrowly tailored to any compelling governmental interest.

154. The Mandate is not the least restrictive means of furthering Defendants' stated interests.

155. The Mandate and Defendants' threatened enforcement of the Mandate violate Plaintiffs' rights secured to them by the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.*

156. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

COUNT II

Violation of the First Amendment to the United States Constitution
Free Exercise Clause
Substantial Burden

157. Plaintiffs incorporate by reference all preceding paragraphs.

158. Plaintiffs' sincerely held religious beliefs prohibit them from providing coverage or access to coverage for abortion-causing drugs or devices or related education and counseling. Plaintiffs' compliance with these beliefs is a religious exercise.

159. Neither the Affordable Care Act nor the Mandate is neutral.

160. Neither the Affordable Care Act nor the Mandate is generally applicable.

161. Defendants have created categorical exemptions and individualized exemptions to the Mandate.

162. The Mandate furthers no compelling governmental interest.

163. The Mandate is not the least restrictive means of furthering Defendants' stated interests.

164. The Mandate creates government-imposed coercive pressure on Plaintiffs to change or violate their religious beliefs.

165. The Mandate chills Plaintiffs' religious exercise.

166. The Mandate exposes Plaintiffs to substantial fines for their religious exercise.

167. The Mandate exposes Plaintiffs to substantial competitive disadvantages, in that they may no longer be permitted to offer health insurance.

168. The Mandate imposes a substantial burden on Plaintiffs' religious exercise.

169. The Mandate is not narrowly tailored to any compelling governmental interest.

170. The Mandate and Defendants' threatened enforcement of the Mandate violate Plaintiffs' rights secured to them by the Free Exercise Clause of the First Amendment to the United States Constitution.

171. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

COUNT III

Violation of the First Amendment to the United States Constitution
Free Exercise Clause
Intentional Discrimination

172. Plaintiffs incorporate by reference all preceding paragraphs.

173. Plaintiffs sincerely held religious beliefs prohibit them from providing coverage or access to coverage for abortion-causing drugs or devices or related education and counseling. Plaintiffs' compliance with these beliefs is a religious exercise.

174. Despite being informed in detail of these beliefs beforehand, Defendants designed the Mandate and the religious exemption to the Mandate in a way that made it impossible for Plaintiffs to comply with both their religious beliefs and the Mandate.

175. Defendants promulgated both the Mandate and the religious exemption to the Mandate in order to suppress the religious exercise of Plaintiffs and others.

176. The Mandate and Defendants' threatened enforcement of the Mandate thus violate the Plaintiffs rights secured to them by the Free Exercise Clause of the First Amendment to the United States Constitution.

177. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

COUNT IV

Religious Discrimination—
Violation of the First and Fifth Amendments to the United States Constitution
Free Exercise and Establishment Clauses; Due Process and Equal Protection

178. Plaintiffs incorporate by reference all preceding paragraphs.

179. By design, Defendants imposed the Mandate on some religious individuals and organizations but not on others, resulting in discrimination among religious objectors.

180. The Mandate vests HRSA with unbridled discretion in deciding whether to allow exemptions to some, all, or no organizations meeting the definition of "religious employers."

181. Religious liberty is a fundamental right.

182. The "religious employer" exemption protects many religious objectors, but not Plaintiffs.

183. The "safe harbor" protects many religious objectors, but not Plaintiffs.

184. The ANPRM promises protection to many religious objectors, but not Plaintiffs.

185. The Mandate and Defendants' threatened enforcement of the Mandate thus violate Plaintiffs' rights secured to them by the Free Exercise and Establishment Clauses of the First Amendment to the United States Constitution and by Due Process Clause of the Fifth Amendment to the United States Constitution.

186. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

COUNT V

Violation of the First Amendment to the United States Constitution
Freedom of Speech
Compelled Speech

187. Plaintiffs incorporate by reference all preceding paragraphs.

188. Plaintiffs believe and profess that providing abortion-causing drugs and devices violates their religious beliefs.

189. The Mandate would compel Plaintiffs to cooperate in activities through its provision of health insurance that are violations of Plaintiffs' religious beliefs.

190. The Mandate would compel Plaintiffs to provide education and counseling related to abortion-causing drugs and devices.

191. Defendants' actions thus violate Plaintiffs' right to be free from compelled speech as secured to it by the First Amendment to the United States Constitution.

192. The Mandate's compelled speech requirement is not narrowly tailored to a compelling governmental interest.

193. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

COUNT VI

Violation of the First Amendment to the United States Constitution
Freedom of Speech
Expressive Association

194. Plaintiffs incorporate by reference all preceding paragraphs.

195. The Mandate would compel Plaintiffs to cooperate in activities through their provision of health insurance that are violations of Plaintiffs' religious beliefs.

196. The Mandate would compel Plaintiffs to provide, through their provision of health insurance, education and counseling related to abortion-causing drugs and devices.

197. Defendants' actions thus violate Plaintiffs' right of expressive association as secured to it by the First Amendment of the United States Constitution.

198. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

COUNT VII

Violation of the Administrative Procedure Act
Lack of Good Cause

199. Plaintiffs incorporate by reference all preceding paragraphs.

200. Defendants' stated reasons that public comments were unnecessary, impractical, and opposed to the public interest are false and insufficient, and do not constitute "good cause."

201. Without proper notice and opportunity for public comment, Defendants were unable to take into account the full implications of the regulations by completing a

meaningful "consideration of the relevant matter presented." Defendants did not consider or respond to the voluminous comments they received in opposition to the interim final rule.

202. Therefore, Defendants have taken agency action not in observance with procedures required by law, and Plaintiffs are entitled to relief pursuant to 5 U.S.C. § 706(2)(D).

203. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

COUNT VIII

Violation of the Administrative Procedure Act Arbitrary and Capricious Action

204. Plaintiffs incorporate by reference all preceding paragraphs.

205. In promulgating the Mandate, Defendants failed to consider the constitutional and statutory implications of the mandate on Plaintiffs and similar organizations and individuals.

206. Defendants' explanation for their decision not to exempt Plaintiffs and similar religious individuals from the Mandate runs counter to the evidence submitted by religious individuals during the comment period.

207. Thus, Defendants' issuance of the interim final rule was arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) because the rule fails to consider

the full extent of the Mandate's implications and does not take into consideration the evidence against it.

208. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

COUNT IX

Violation of the Administrative Procedure Act
Agency Action Not in Accordance with Law
Weldon Amendment
Religious Freedom Restoration Act
First Amendment to the United States Constitution

209. Plaintiffs incorporate by reference all preceding paragraphs.

210. The Mandate is contrary to the provisions of the Weldon Amendment of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, Public Law 110 329, Div. A, Sec. 101, 122 Stat. 3574, 3575 (Sept. 30, 2008).

211. The Weldon Amendment provides that "[n]one of the funds made available in this Act [making appropriations for Defendants Department of Labor and Health and Human Services] may be made available to a Federal agency or program . . . if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions."

212. The Mandate requires issuers, including Plaintiffs, to provide coverage or access to coverage of all FDA-approved "contraceptives."

213. Some FDA-approved "contraceptives" cause abortions.

214. As set forth above, the Mandate violates RFRA and the First Amendment.

215. Under 5 U.S.C. § 706(2)(A), the Mandate is contrary to existing law, and is in violation of the APA.

216. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

COUNT X

Violation of the Administrative Procedure Act
Agency Action Not in Accordance with Law
Affordable Care Act

217. Plaintiffs incorporate by reference all preceding paragraphs.

218. The Mandate is contrary to the provisions of the Affordable Care Act.

219. Section 1303(b)(1)(A) of the Affordable Care Act states that "nothing in this title"—*i.e.*, title I of the Act, which includes the provision dealing with "preventive services"—"shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits for any plan year."

220. Section 1303 further states that it is "the issuer" of a plan that "shall determine whether or not the plan provides coverage" of abortion services.

221. Under the Affordable Care Act, Defendants do not have the authority to decide whether a plan covers abortion; only the issuer does.

222. The Mandate requires issuers, including Plaintiffs, to provide coverage or access to coverage for all Federal Drug Administration-approved contraceptives.

223. Some FDA-approved contraceptives cause abortions.

224. Under 5 U.S.C. § 706(2)(A), the Mandate is contrary to existing law, and is in violation of the APA.

225. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that the Court:

a. Declare that the Mandate and Defendants' enforcement of the Mandate against Plaintiffs violate the First and Fifth Amendments to the United States Constitution;

b. Declare that the Mandate and Defendants' enforcement of the Mandate against Plaintiffs violate the Religious Freedom Restoration Act;

c. Declare that the Mandate was issued in violation of the Administrative Procedure Act;

d. Issue a permanent injunction prohibiting enforcement of the Mandate against Plaintiffs and other individuals and organizations that object on religious grounds to providing insurance coverage for abortion-causing drugs and devices, and related education and counseling;

e. Award Plaintiffs the costs of this action and reasonable attorney's fees; and

f. Award such other and further relief as it deems equitable and just.

JURY DEMAND

Plaintiffs request a trial by jury on all issues so triable.

*****

Respectfully submitted this 12th day of September, 2012.

/s/ Charles E. Geister III
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- And -

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(*Motion for Pro Hac Vice pending*)
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ATTORNEYS FOR PLAINTIFFS

VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on September 12, 2012

David Green*

**I certify that I have the signed original of this document, which is available for inspection at any time by the Court or a party to this action.*

VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on September 12, 2012

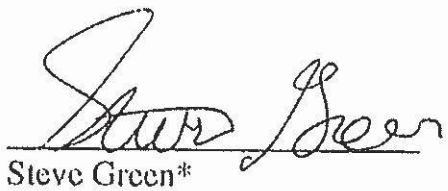
Barbara Green*

**I certify that I have the signed original of this document, which is available for inspection at any time by the Court or a party to this action.*

VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on September 12, 2012



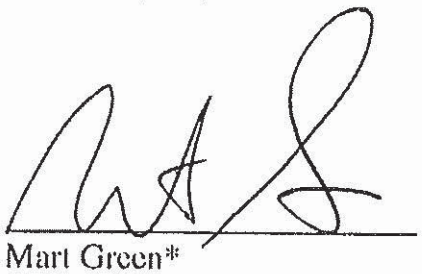
Steve Green*

**I certify that I have the signed original of this document, which is available for inspection at any time by the Court or a party to this action.*

VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on September 12, 2012



Mart Green*

**I certify that I have the signed original of this document, which is available for inspection at any time by the Court or a party to this action.*

VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on September 12, 2012

Darsee Lett

Darsee Lett*

**I certify that I have the signed original of this document, which is available for inspection at any time by the Court or a party to this action.*

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

HOBBY LOBBY STORES, INC., MARDEL, INC., DAVID GREEN, BARBARA GREEN, STEVE GREEN, MART GREEN, AND DARSEE LETT, Plaintiffs, v. KATHLEEN SEBELIUS, Secretary of the United States Department of Health and Human Services, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, HILDA SOLIS, Secretary of the United States Department of Labor, UNITED STATES DEPARTMENT OF LABOR, TIMOTHY GEITHNER, Secretary of the United States Department of the Treasury, and UNITED STATES DEPARTMENT OF THE TREASURY, Defendants.	Case No. CIV-12-1000-HE

PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION AND OPENING BRIEF IN SUPPORT

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INTRODUCTION

Plaintiffs, a devout Christian family, have built one of largest and most successful retail chains in America. Their faith is woven into their business. It is reflected in what they sell, in how they advertise, in how they treat employees, in how much they give to charity, and in the one day of the week when their stores are closed. In a profound way, their business is a ministry.

The Defendant government officials have issued a rule (the "mandate") that requires millions of American business owners, including Plaintiffs, to cover abortion-inducing drugs and devices in employee health insurance. Plaintiffs' religious convictions forbid them from complying. Thanks to the mandate, the price of those convictions will be steep. Plaintiffs face fines of millions of dollars if they do not give in. The fines start January 1, 2013.

Levying fines on someone for following their faith is wrong. It is alien to our American traditions of individual liberty, religious tolerance, and limited government. It also violates federal law and the United States Constitution. Plaintiffs have therefore filed this lawsuit and simultaneously brought this motion for preliminary injunction pursuant to Federal Rule of Civil Procedure 65 and Local Civil Rule 7.1.

In the only similar decision to date, a federal district court in Colorado granted a preliminary injunction to another family business who faced imminent exposure to the mandate. *See Newland* v. *Sebelius*, No. 1:12-cv-1123, slip op. at 17-18 (D. Colo. July 27, 2012) (order granting preliminary injunction) (Ex. 1). Plaintiffs are in the same position, and deserve the same remedy. Preliminary relief is warranted because the mandate

violates the Religious Freedom Restoration Act (RFRA) and the First Amendment, and because Plaintiffs otherwise face the imminent prospect of irreparable harm to their religious freedom, to their businesses, and to their employees' well-being.

FACTUAL BACKGROUND

I. THE GREEN FAMILY AND HOBBY LOBBY

As set forth in Plaintiffs' Verified Complaint, incorporated herein, Plaintiffs are a family that, through various trusts, owns and operates Hobby Lobby Stores, Inc. Verified Compl. ("VC") ¶¶ 2-3, 18-24, 38. Founded by Plaintiff David Green in 1970, Hobby Lobby has grown from a small picture frame company into one of the nation's leading arts and crafts chains, operating over 500 stores in over 40 with over 13,000 full-time employees. VC ¶¶ 2, 18, 32-34. Steve is Hobby Lobby's President, Darsee a Vice-President, and Mart a Vice-CEO and the founder and CEO of Mardel, Inc., an affiliated chain of Christian bookstores. VC ¶¶ 18-22, 36-38. The Green family operates Hobby Lobby and Mardel through a management trust. VC ¶¶ 23-24, 38.

The Greens run Hobby Lobby according to their Christian faith. VC ¶¶ 39-47. As explained in the company's statement of purpose, they are committed to "[h]onoring the Lord in all we do by operating the company in a manner consistent with Biblical principles." VC ¶ 42. The family members sign a Statement of Faith and a Trustee Commitment obligating them to conduct themselves and their businesses according to their faith. VC ¶ 38.

That faith is woven into how the family runs Hobby Lobby. The company takes out hundreds of full-page ads every Christmas and Easter celebrating the religious nature of

the holidays. VC ¶ 47. The stores carry religiously themed items and play Christian music. VC ¶ 43. The family monitors merchandise, marketing, and operations to make sure all reflect their beliefs, and they avoid participating in activities they believe to be immoral or harmful to others. VC ¶¶ 43-44. They give millions from their profits to fund ministries around the world. VC ¶¶ 39-40. Chaplains, spiritual counseling, and religiously-themed financial management classes are made available for employees who wish to participate. VC ¶ 51. And, as is well-known, the Greens close all stores on Sundays to give employees a day of rest, even though they risked losing millions in sales by doing so. VC ¶ 45.

The Green family also provides excellent employee health insurance through a self-funded plan. VC ¶ 52. As with all aspects of their business, the Greens believe it is imperative that these benefits honor their religious convictions. *Id.* Because of their beliefs about unborn human life, their prescription coverage excludes contraceptive devices that can cause abortion (such as IUDs) and pregnancy-terminating drugs like RU-486. VC ¶¶ 53-54. When a recent review of the company's health plans revealed that a drug formulary inadvertently included two drugs that could cause abortion—namely the "morning after pill" (Plan B), and the "week-after pill" (Ella)—the family immediately excluded them. VC ¶ 55. The Green family cannot in good conscience knowingly offer coverage for abortion-causing drugs or devices. VC ¶¶ 53-58.

II. THE HHS MANDATE

Federal regulations now mandate that employer health insurance include free coverage for all FDA-approved contraceptive drugs and sterilization methods. 42 U.S.C

§ 300gg–13(a)(4); 75 Fed. Reg. 41726, 41728 (July 19, 2010); 76 Fed. Reg. 46621, 46626 (Aug. 3, 2011); VC ¶¶ 94-95. This mandate includes drugs and devices—such as "Plan B," "Ella" and certain IUDs—that may prevent implantation of a fertilized egg in the womb. VC ¶ 95.[1] The mandate is enforceable by government penalties, regulatory action, and private lawsuits. 26 U.S.C. §§ 4980H, 4980D; 29 U.S.C. §§ 1185d, 1132; VC ¶¶ 135, 142, 144. Certain non-profit religious employers—essentially those qualifying as houses of worship under the Internal Revenue Code—are exempt from the mandate. *See* 45 C.F.R. § 147.130(a)(1)(iv)(B)(1)-(4) (setting forth exemption criteria); VC ¶ 123. For non-exempt employers (such for-profit business owners), the mandate takes effect beginning with the first insurance plan year after August 1, 2012. 42 U.S.C. § 300gg-13(b); 76 Fed. Reg. 46621, 46623; VC ¶¶ 121, 132.

In response to public outcry,[2] the government announced a "safe harbor," which delays the mandate's enforcement for one year against certain non-profit, non-exempt organizations. VC ¶¶ 125-26. The government also announced its intention to formulate an additional rule during that year that would address those organizations' concerns. *See* "Advance Notice of Proposed Rulemaking" (ANPRM), 77 Fed. Reg. 16501 (published

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[1] *See* Women's Preventive Services: Required Health Plan Coverage Guidelines, *available at* http://www.hrsa.gov/womensguidelines/ (last visited Sept. 9, 2012); FDA Birth Control Guide, *available at* http://www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM282014.pdf (last visited Sept. 9, 2012).

[2] *See* 76 Fed. Reg. 46621, 46623 (Aug. 3, 2011); 77 Fed. Reg. 8725, 8726 (Feb. 15, 2012) (discussing public comments). Further, currently pending against the mandate are 26 lawsuits by more than 80 organizations and individuals. *See* Dkt [#5], Notice of Related or Companion Cases (Sept. 12, 2012).

Mar. 21, 2012); VC ¶ 129-30. Neither the safe harbor nor the proposed rulemaking apply to for-profit businesses. VC ¶¶ 126, 130.

III. THE MANDATE'S IMMINENT IMPACT ON PLAINTIFFS

The mandate will take effect against Plaintiffs on January 1, 2013. *See* VC ¶¶ 131-32 (alleging that Plaintiffs' plan year begins on January 1). Because they own a for-profit business, Plaintiffs are not covered by the religious employer exemption, the safe harbor, or the proposed future rulemaking. VC ¶¶ 124, 126, 130.[3] Nor are Plaintiffs' health plans "grandfathered" under the Affordable Care Act. VC ¶ 59. Consequently, in less than four months, Plaintiffs must either violate their faith by covering abortion-causing drugs, or expose themselves to ruinous penalties. VC ¶¶ 134-44.

Hobby Lobby currently has over 13,000 full-time employees. VC ¶ 136. If Hobby Lobby continues to offer employee health insurance without the mandated items on January 1, 2013, it will incur penalties of about $1.3 million per day, VC ¶ 144; 26 U.S.C. § 4980D, and will expose itself to private enforcement suits. 29 U.S.C. §§ 1185d(a)(1), 1132. If it instead ceases to offer employee insurance, it will face annual penalties of about $26 million per year. VC ¶ 144; 26 U.S.C. § 4980H. Mardel faces similar penalties with respect to its 372 full-time employees. VC ¶ 137.

[3] The fact that Plaintiffs do not not qualify for the safe harbor and could not benefit from the proposed rulemaking sharply distinguishes their situation from that of Belmont Abbey College and Wheaton College, whose lawsuits were recently dismissed without prejudice for lack of standing and ripeness. *See Belmont Abbey College* v. *Sebelius*, No.11-1989, slip op. at 14-22 (D.D.C. July 18, 2012) (order dismissing lawsuit without prejudice); *Wheaton Coll.* v. *Sebelius*, No. 12-1169, slip op. at 7-18 (D.D.C. Aug. 24, 2012) (same).

As they do every fall, Plaintiffs are now planning for the 2013 insurance plan year. VC ¶¶ 140-41. This is a complex and time-consuming process. *Id* The approaching mandate casts grave uncertainty on Plaintiffs' ability to provide insurance for thousands of employees and their families next January—less than four months' time. VC ¶ 142. A lapse in coverage would be disastrous for Plaintiffs' businesses and for the employees and their families who depend on Plaintiffs' insurance. VC ¶¶ 142-43.

IV. PROCEDURAL HISTORY

Plaintiffs filed their complaint on September 12, 2012, challenging the mandate on a variety of constitutional and statutory grounds. They simultaneously filed this motion seeking preliminary injunctive relief.

ARGUMENT

To obtain a preliminary injunction, Plaintiffs must show (1) a likelihood of success on the merits, (2) a threat of irreparable harm, which (3) outweighs any harm to the non-moving party, and that (4) the injunction would not adversely affect the public interest. *Awad* v. *Ziriax*, 670 F.3d 1111, 1125 (10th Cir. 2012). Plaintiffs need not meet the heightened standard for "disfavored" injunctions because the relief sought would preserve the status quo and require no government action. *See Newland*, slip op. at 6-7 (citing *O Centro Espirita Beneficente Uniao do Vegetal* v. *Ashcroft*, 389 F.3d 973, 975 (10th Cir. 2004) (en banc), aff'd and remanded, *Gonzales* v. *O Centro Espirita Beneficente do Vegetal*, 546 U.S. 418 (2006)). Moreover, if the equities strongly favor Plaintiffs, they may show likelihood-of-success simply by showing the issues are "so serious, substantial, difficult, and doubtful as to make the[m] ripe for litigation and

deserving of more deliberate investigation." *Newland*, slip op. at 7-8 (citing *Okla. ex rel. Okla. Tax Comm'n* v. *Int'l Registration Plan, Inc.*, 455 F.3d 1107, 1113 (10th Cir. 2006)). In any event, Plaintiffs would be entitled to preliminary relief even under the heightened standard. *See, e.g., Awad*, 670 F.3d at 1126 (declining to decide whether "less demanding standard" applies because plaintiff "meets the heightened standard").

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.

A. The mandate violates the Religious Freedom Restoration Act.

Under RFRA, the federal government "may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §2000bb-1(b); *see also, e.g., United States* v. *Hardman*, 297 F.3d 1116, 1125 (10th Cir. 2002) (en banc). RFRA thus restored strict scrutiny to religious exercise claims. *Gonzales*, 546 U.S. at 424, 431; *see also* 42 U.S.C. § 2000bb(b)(1) (RFRA "restore[s] the compelling interest test as set forth in *Sherbert* v. *Verner*, 374 U.S. 398 (1963) and *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972))."[4] A plaintiff makes a prima facie case under RFRA by showing the government substantially burdens its sincere religious exercise. *Kikumura* v. *Hurley*, 242 F.3d 950, 960 (10th Cir. 2001). The burden then shifts to the government to show that "the compelling interest test is satisfied through application of the challenged law 'to the

[4] Although RFRA is unconstitutional as applied to States, it "independently remains applicable to federal officials." *Hardman*, 297 F.3d at 1126 (quotes omitted). Further, RFRA applies "to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993." 42 U.S.C. § 2000bb-3(a).

person'—the particular claimant whose sincere exercise of religion is being substantially burdened." *Gonazles*, 546 U.S. at 430-31 (quoting 42 U.S.C. § 2000bb-1(b)).[5]

1. Plaintiffs' sincere abstention from providing abortion-causing drugs and devices qualifies as a religious exercise.

RFRA broadly defines "religious exercise" to "include[] any exercise of religion, whether or not compelled by, or central to, a system of religious belief.'" 42 U.S.C. § 2000bb-2(4), *as amended by* 42 U.S.C. § 2000cc-5(7)(A); *see also Kikumura*, 242 F.3d at 960 (explaining that "a religious exercise need not be mandatory for it to be protected under RFRA").

The Green family has maintained a commitment to running their business in harmony with their faith despite risking the loss of millions in profits. VC ¶¶ 39-49. They conscientiously oppose supporting activities or products they regard as immoral or harmful to others. VC ¶¶ 43-44. This includes abortion-causing drugs and devices, which are explicitly excluded from their insurance plans. VC ¶ 53-56. Abstaining for religious reasons from providing such items easily qualifies as "religious exercise," just as much as abstaining from work on certain days, *see Sherbert* v. *Verner*, 374 U.S. 398 (1963), refusing to manufacture objectionable items, *see Thomas* v. *Review Bd.*, 450 U.S. 707 (1981), or providing alternative education for children, *see Wisconsin* v. *Yoder*, 406 U.S. 205 (1972)). *See also* 42 U.S.C. § 2000bb(b)(1) (incorporating *Sherbert* and *Yoder* in RFRA); *and see Employment Div.* v. *Smith*, 494 U.S. 872, 877 (1990) (observing that

[5] These burdens are the same at the preliminary injunction stage as at trial. *Id.* at 429-30 (citing *Ashcroft* v. *ACLU*, 542 U.S. 656, 666 (2004)).

"the 'exercise of religion' often involves not only belief and profession but the performance of (*or abstention from*) physical acts") (emphasis added).

2. The mandate substantially burdens Plaintiffs' religious exercise by forcing them to choose between following their convictions and paying enormous fines.

The government "substantially burdens" religious exercise when a law "ha[s] a substantial effect on the exercise of religious belief." *United States* v. *Friday*, 525 F.3d 938, 947 (10th Cir. 2008) (quoting *Hardman*, 297 F.3d at 1126-27). Under RFRA's companion statute, RLUIPA, the Tenth Circuit finds a substantial burden when the government:

(1) "requires participation in an activity prohibited by a sincerely held religious belief,"

(2) "prevents participation in conduct motivated by a sincerely held religious belief," or

(3) "places substantial pressure on an adherent either not to engage in conduct motivated by a sincerely held religious belief or to engage in conduct contrary to a sincerely held religious belief[.]"

Abdulhaseeb v. *Calbone*, 600 F.3d 1301, 1315 (10th Cir. 2010).[6] The mandate easily qualifies as a substantial burden under the first and third prongs of that test.

As to the first prong, the mandate compels Plaintiffs to provide employees with insurance coverage they believe implicates them in an immoral practice. VC ¶¶ 53-56. As to the third prong, the mandate pressures Plaintiffs by exacting a steep price for

[6] *See also Comanche Nation* v. *United States*, 2008 WL 4426621, at *3 (W.D. Okla. Sept. 23, 2008) (observing that Tenth Circuit had defined "substantial burden" under a pre-RLUIPA version of RFRA as a government action which "must 'significantly inhibit or constrain conduct or expression' or 'deny reasonable opportunities to engage in' religious activities") (citing *Thiry* v. *Carlson*, 78 F.3d 1491, 1495 (10th Cir. 1996)).

maintaining their beliefs. The Greens can continue to exercise their faith only by dropping insurance and facing penalties of about $26 million per year, or by offering insurance without the mandated coverage and facing penalties of $1.3 million per *day* (as well as the prospect of private lawsuits). 26 U.S.C. §§ 4980D, 4980H; 29 U.S.C. § 1132 (a); VC ¶¶ 142-44. This is "a Hobson's choice—an illusory choice where the only realistically possible course of action trenches on an adherent's sincerely held religious belief." *Abdulhaseeb*, 600 F.3d at 1615.

The Supreme Court has invalidated indirect pressure on religious exercise that was less weighty than the direct and severe pressure imposed by the mandate. *See, e.g.*, *Sherbert*, 374 U.S. at 404 (potential loss of unemployment benefits for refusing to work on Sabbath placed "unmistakable" pressure on plaintiff to abandon that observance); *Yoder*, 406 U.S. at 208, 218 (five dollar fine on plaintiffs' religious practice was "not only severe, but inescapable"). Fining someone for exercising his faith is the paradigm example of a substantial burden. *See, e.g.*, *Sherbert*, 374 U.S. at 403-04 (explaining that forcing choice between plaintiff's faith and unemployment benefits "puts the same kind of burden upon the free exercise of religion as would a fine imposed against [plaintiff] for her Saturday worship").

3. The mandate cannot satisfy strict scrutiny.

Consequently, Defendants must "'demonstrate[] that application of the burden to [Plaintiffs]' represents the least restrictive means of advancing a compelling interest." *Gonzales*, 546 U.S. at 423 (quoting 42 U.S.C. § 2000bb-1(b)); *Hardman*, 297 F.3d at 1126. If a less restrictive alternative would serve Defendants' purpose, "the legislature

must use that alternative." *United States* v. *Playboy Ent'mt Group, Inc.*, 529 U.S. 803, 813 (2000) (emphasis added). RFRA imposes "the most demanding test known to constitutional law." *City of Boerne* v. *Flores*, 521 U.S. 507, 534 (1997). Defendants cannot meet it.

a. The mandate furthers no compelling interest because the government has issued numerous exemptions and because contraception is already widely available.

To demonstrate a compelling interest, Defendants must show the mandate furthers interests "of the highest order." *Church of the Lukumi Babalu Aye* v. *City of Hialeah*, 508 U.S. 520, 546 (1993); *Hardman*, 297 F.3d at 1127. This determination "is not to be made in the abstract" but rather "in the circumstances of this case" by examining how the interest is "addressed by the law at issue." *Cal. Democratic Party* v. *Jones*, 530 U.S. 567, 584 (2000); *see also Lukumi*, 508 U.S. at 546 (rejecting City's assertion that protecting public health was compelling "in the context of" the ordinances at issue). "Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation" of religious exercise. *Thomas* v. *Collins*, 323 U.S. 516, 530 (1945); *Hardman*, 297 F.3d at 1127. Further, Defendants "must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *Turner Broad. Sys. Inc.* v. *FCC*, 512 U.S. 624, 664 (1994).

The mandate aims to increase access to contraceptives, a measure Defendants believe will promote women's health and equality. 77 Fed. Reg. 8725, 8727-28 (Feb. 15, 2012). However weighty that interest is in the abstract, Defendants cannot demonstrate that it is "compelling" in the context of the mandate. An interest cannot be "compelling" where

the government "fails to enact feasible measures to restrict other conduct producing substantial harm or alleged harm of the same sort." *Lukumi*, 508 U.S. at 546-47; *Friday*, 525 F.3d at 958. The mandate provides a textbook example of such a failure.

Defendants have chosen *not* to mandate contraceptive coverage in millions of policies. Over 100 million "grandfathered" plans are not required to comply with the mandate; nor are "small employers" who employ over 20 million people. *See Newland*, slip op. at 13-14 (citing 42 U.S.C. § 18011; 26 U.S.C. § 4980H(c)(2)).[7] Churches and religious orders are exempt. 77 Fed. Reg. 8725, 8726 (Feb. 15, 2012). Certain religious groups who object to insurance and members of "health care sharing ministries" are exempt from the Affordable Care Act altogether and therefore need not cover contraceptives. 26 U.S.C. § 5000A(d)(2)(A), (B), (ii). The "safe harbor" gives certain non-exempt religious non-profits an additional year before the mandate will be enforced against them, and the government recently expanded the safe harbor to include additional non-profits. VC ¶¶ 125-26 & n.2. This wide-ranging scheme of exemptions, as Judge Kane correctly found, "completely undermines any compelling interest in applying the preventive care coverage mandate to Plaintiffs." *Newland*, slip op. at 15.

The Supreme Court's decision in *Gonzales* compels this conclusion. In that RFRA case, the government claimed a compelling interest in uniformly applying federal

[7] *See also* Keeping the Health Plan You Have: The Affordable Care Act and "Grandfathered" Health Plans, *available at* http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html) (last visited Sept. 9, 2012); http://www.census.gov/econ/smallbus.html (last visited Sept. 9, 2012). HHS has predicted that a majority of large employers, employing more than 50 million Americans, will continue to use grandfathered plans through at least 2014, and that a third of small employers with between 50 and 100 employees may do likewise. *Id*.

narcotics laws and protecting public health justified refusing to exempt a church's religious use of a dangerous narcotic (*hoasca*, which the church used in a tea). The Court unanimously rejected the argument, because the narcotics laws themselves authorized exemptions and the government had already granted one for a different hallucinogen (peyote) used by a larger religious group (Native Americans). *Gonazles*, 546 U.S. at 432-35. The Court thus held that "the Government failed to demonstrate, at the preliminary injunction stage, a compelling interest in barring the [church's] sacramental use of *hoasca*." *Id.* at 439.

In light of *Gonzales*, Defendants' alleged interests in increased contraceptive access and promoting health cannot qualify as "compelling" where they have deliberately chosen *not* to mandate contraceptive coverage in over 100 million insurance policies. *Gonzales* found that *one* exemption to the narcotics laws for a *different* drug undermined the government's "compelling" interest in uniformity and health. Here, Defendants have crafted *numerous* exemptions, applicable to various secular and religious organizations, for the *same* drugs. Moreover, as in *Gonazles*, several of those exemptions (i.e., the "religious employer" exemption from the mandate, and the other religious exemptions from the Affordable Care Act) were granted to relieve the same burden Plaintiffs claim. In light of the exemptions already recognized, "RFRA makes clear that it is the obligation of the courts to consider whether exceptions are required" for those like Plaintiffs, whose faith is burdened by the mandate in a manner just as severe as the millions of persons who have already been exempted. *Gonzales*, 546 U.S. at 434.

A related reason why Defendants' asserted interest cannot be compelling assert is that the problem Defendants target is minuscule. Defendants cannot legitimately assert there is a grave, widespread crisis of access to contraceptives justifying their coercive mandate, because they have confirmed publicly that the mandated drugs are already widely available. In a January 20, 2012 press release, Defendant Sebelius explained that:

- "[B]irth control … is the most commonly taken drug in America by young and middle-aged women";
- "[C]ontraceptive services are available at sites such as community health centers, public clinics, and hospitals with income-based support";
- "[L]aws in a majority of states…already require contraception coverage in health plans[.]"

Statement by U.S. Department of Health and Human Services Secretary Kathleen Sebelius, *available at* http://www.hhs.gov/news/press/2012pres/01/20120120a.html (last visited Sept. 9, 2012). Defendants therefore cannot credibly claim an interest "of the highest order" in marginally increasing access to contraceptives—much less in doing so by conscripting Plaintiffs' participation against their own faith. *See Brown* v. *Entm't Merch. Ass'n*, 131 S. Ct. 2729, 2741 n.9 (2011) (noting that "the government does not have a compelling interest in each marginal percentage point by which its goals are advanced").

Judge Kane's conclusion in *Newland* is therefore inescapable: "The government has exempted over 190 million health plan participants and beneficiaries from the preventive care coverage mandate; this massive exemption completely undermines any compelling interest in applying the … mandate to Plaintiffs." Slip op. at 14-15.

b. Defendants already have numerous less restrictive means of furthering their interest.

Even assuming a compelling interest, the mandate still fails strict scrutiny because there are other readily-available means of enhancing contraception coverage that are far less burdensome to Plaintiffs' rights. *See, e.g.*, *Hardman*, 297 F.3d at 1130 (explaining that, under strict scrutiny, government must "demonstrate that *no alternative forms of regulation would combat such abuses without infringing First Amendment rights*") (quoting *Sherbert*, 374 U.S. at 407) (emphasis in original). Defendants *must* employ feasible less restrictive alternatives, instead of burdening religious objectors. *See, e.g.*, *Playboy Ent'mt Group*, 529 U.S. at 813 (explaining that, if a less restrictive alternative would serve the government's purpose, "the legislature must use that alternative"). Further, the government must adduce specific evidence that its chosen means is the least restrictive option—"[m]ere speculation is not enough to carry this burden." *Hardman*, 297 F.3d at 1130.

Defendants have a host of readily available alternatives for expanding contraceptive access that would avoid any need to conscript religious objectors. Defendants could:

- Directly provide the drugs at issue, or directly provide insurance coverage for them.
- Allay the costs of the drugs through subsidies, reimbursements, tax credits or tax deductions.
- Empower willing actors—for instance, physicians, pharmaceutical companies, or the interest groups who champion free access—to deliver the drugs themselves and to sponsor education about them.
- Use their own considerable resources to inform the public that these drugs are available in a wide array of publicly-funded venues.

This array of alternatives is real, not hypothetical. On its own website, Defendant HHS announces that it plans to spend over $300 million in 2012 to provide contraceptives directly through Title X funding.[8] Moreover, the federal government, in partnership with state governments, has constructed an extensive funding network designed to increase contraceptive access, education, and use, including:

- $2.37 billion in public outlays for family planning in fiscal year 2010.
- $228 million in fiscal year 2010 for Title X of the Public Health Service Act, the only federal program devoted specifically to supporting family planning services.
- $294 million in state spending for family planning in fiscal year 2010. [9]

The same report notes that public funding for family planning increased 31% from fiscal year 1980 to fiscal year 2010. *Id.* Nothing prevents Defendants from using such pre-existing sources to further their interest in increasing women's access to contraceptives. As Judge Kane aptly concluded in *Newland*:

> Defendants have failed to adduce facts establishing that government provision of contraceptive services will necessarily entail logistical and administrative obstacles defeating the ultimate purpose of providing no-cost preventive health care coverage to women. Once again, the current existence of analogous programs heavily weighs against such an argument.

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[8] *See* Department of Health and Human Services, Office of the Assistant Secretary of Health, Office of Population Affairs, *Announcement of Anticipated Availability of Funds for Family Planning Services Grants*, available at *https://www.grantsolutions.gov/gs/preaward/previewPublicAnnouncement.do?id=12978* (last visited Sept. 10, 2012) (announcing that "[t]he President's Budget for Fiscal Year (FY) 2012 requests approximately $327 million for the Title X Family Planning Program").

[9] *Facts on Publicly Funded Contraceptive Services in the United States* (Guttmacher Inst. May 2012) (citations omitted), *available at* http://www.guttmacher.org/pubs/fb_contraceptive_serv.html (last visited Sept. 10, 2012).

Newland, slip op. at 17. Using those already-existing public programs would further Defendants' goals without coercing Plaintiffs to violate their faith.

Moreover, there is no indication that Defendants even *considered* using these kinds of alternatives, which automatically violates the least restrictive means requirement. *See, e.g.*, *Grutter* v. *Bollinger*, 539 U.S. 306, 339 (2003) (narrow tailoring requires "serious, good faith consideration of workable…alternatives that will achieve" the stated goal). If Defendants cannot show they even investigated less restrictive alternatives—especially in light of the fact that numerous public comments alerted them to religious employers' objections to the mandate—their rule cannot survive strict scrutiny.

***

In sum, Plaintiffs are likely to prevail on their claim that the mandate violates the Religious Freedom Restoration Act.

B. The mandate violates the Free Exercise Clause.

In addition to violating RFRA, the mandate also violates the Free Exercise Clause because it is not "neutral and generally applicable." *Lukumi*, 508 U.S. 20 at 545 (citing *Employment Division* v. *Smith*, 494 U.S. 4572, 880 (1990)). The mandate is therefore subject to strict scrutiny which, for the reasons discussed above, it cannot meet. *See Lukumi*, 508 U.S. at 546 (explaining that such laws "undergo the most rigorous of scrutiny").[10]

[10] Neutrality and general applicability overlap and "failure to satisfy one requirement is a likely indication that the other has not been satisfied." *Lukumi*, 508 U.S. at 531.

1. The mandate is not neutral because it exempts some religious employers while compelling others.

The mandate fails neutrality at the most basic level by explicitly discriminating among organizations on a religious basis. *See, e.g.*, *Lukumi,* 508 U.S. at 533 (explaining that "the minimum requirement of neutrality is that a law not discriminate on its face"). On its face, the religious employer exemption divides religious objectors into favored and disfavored classes, forgetting *Lukumi*'s warning that "[a] law lacks facial neutrality if it refers to a religious practice without a secular meaning discernible from the language or context." *Lukumi*, 508 U.S. at 533 (emphasis added).

That religious employer exemption protects only certain religious bodies, which it defines by reference to their internal *religious* characteristics. Namely, it exempts only organizations whose "purpose" is to inculcate religious values; who "primarily" employ and serve co-religionists; and who qualify as churches or religious orders under the tax code. 45 C.F.R. § 147.130(a)(iv)(B)(1)-(4). This openly does what *Lukumi* says a neutral law cannot do: refer to religious qualities without any discernible secular reason. *Lukumi*, 508 U.S. at 533. There is no conceivable secular purpose, for instance, in limiting conscience protection to religious groups that "primarily serve" co-religionists while denying it to those (like Plaintiffs) who serve persons regardless of their faith. Whatever motivated these criteria, they practice religious "discriminat[ion] on [their] face" and therefore trigger strict scrutiny. *Lukumi*, 508 U.S. at 533.

2. The mandate is not generally applicable due to its numerous exemptions.

The mandate also fails the related requirement of general applicability. A law is not generally applicable if it regulates religiously-motivated conduct, yet leaves unregulated similar secular conduct. *See, e.g.*, *Lukumi*, 508 U.S. at 544-45 (finding animal cruelty and health ordinances not generally applicable because they failed "to prohibit nonreligious conduct that endanger[ed] these interests in a similar or greater degree"—such as animal hunting, euthanasia, and medical testing). Such inconsistency suggests that "society is prepared to impose [the law] upon [religious adherents] but not upon itself," which is the "precise evil . . . the requirement of general applicability is designed to prevent." *Id.* at 545. Because they fail to impose "across-the-board" treatment of regulated conduct, *Smith*, 494 U.S. at 884, such laws are subject to strict scrutiny.

Under those standards, the mandate is not generally applicable. While the purpose of the mandate is to increase access to all FDA-approved contraceptives, well over 100 million organizations and plans are categorically exempted from providing the mandated preventive services. *See supra* Part I.A.3.a (describing exemptions for grandfathered plans, small employers, and certain religious groups). Thus, Defendants deliberately chose not to pursue their goal of increased contraceptive access with respect to a broad array of plans and individuals, while at the same time pursuing it against non-exempt religious objectors like Plaintiffs. *See Newland*, slip op. at 13-14 (finding Defendants' uniformity argument "undermined by the existence of numerous exemptions to the preventive care coverage mandate"). This is the classic case of a law that fails the basic requirement of general applicability.

* * *

Because the mandate cannot qualify as a neutral and generally applicable law under the Free Exercise Clause, Defendants must clear the high bar of strict scrutiny to justify their decision not to exempt other religious objectors, like Plaintiffs, from the mandate. As discussed above, they cannot do so. *See supra* Part I.A.3. Consequently, Plaintiffs are likely to prevail on their claim under the Free Exercise Clause.

II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF PRELIMINARY RELIEF.

It is settled that a potential violation of Plaintiffs' rights under the First Amendment and RFRA threatens irreparable harm. *See, e.g*, *Kikumura* v. *Hurley*, 242 F.3d 950, 963 (10th Cir. 2001) (noting that "courts have held that a plaintiff satisfies the irreparable harm analysis by alleging a violation of RFRA"); *Newland*, slip op. at 8 (noting "it is well-established that the potential violation of Plaintiffs' constitutional and RFRA rights threatens irreparable harm") (citation omitted); *see also Elrod* v. *Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury").

These harms will fall on Plaintiffs imminently. "Plaintiffs need only demonstrate that absent a preliminary injunction, '[they] are likely to suffer irreparable harm before a decision on the merits can be rendered.'" *Newland*, slip. op. at 8 (quoting *Winter* v. *Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). Plaintiffs do not qualify for the one-year safe harbor and therefore face the certain prospect of violating the mandate in less than five months' time—by January 1, 2013—and incurring steep penalties. And, as explained

above, the disruptions occasioned by this impending deadline are occurring *now*, as Plaintiffs arrange their 2013 policies. *See*, *e.g.*, *Newland*, slip op. at 8-9 (reasoning that "[i]n light of the extensive planning involved in preparing and providing its employee insurance plan, and the uncertainty that this matter will be resolved before the coverage effective date, Plaintiffs have adequately established that they will suffer imminent irreparable harm absent injunctive relief"). This factor therefore strongly weighs in favor of preliminary injunctive relief.

III. THE BALANCE OF EQUITIES TIPS IN PLAINTIFFS' FAVOR.

Granting preliminary injunctive relief will merely prevent Defendants from enforcing the mandate against the named Plaintiffs. This will preserve the status quo between the parties, counseling in favor of granting preliminary relief. *See Newland*, slip op. at 6-7 (applying normal standard because the injunction would preserve the status quo). Defendants have already exempted a number of churches and church-related entities from the mandate, delayed enforcement of the mandate against many religious organizations until August 2013, and given many non-religious employers an open-ended exemption in the form of grandfathering. Preventing Defendants from enforcing the mandate against Plaintiffs would therefore not "substantially injure" Defendants' interests. Balanced against any *de minimis* injury to Defendants is the real and immediate threat to Plaintiffs' religious liberty. Moreover, Plaintiffs face the imminent prospect of severe fines for dropping employee insurance, which would gravely impact employees and their families.

In sum, any minimal harm to Defendants in temporarily not enforcing the mandate "pales in comparison to the possible infringement upon Plaintiffs' constitutional and statutory rights." *Newland*, slip op. at 9.

IV. AN INJUNCTION IS IN THE PUBLIC INTEREST.

Finally, a preliminary injunction will serve the public interest by protecting Plaintiffs' First Amendment and RFRA rights. The public has no interest in enforcing a regulation against religious business owners that coerces them to violate their own faith. *See, e.g.*, *Newland*, slip op. at 9-10 (finding "'there is a strong public interest in the free exercise of religion even where that interest may conflict with [another statutory scheme]'") (quoting *O Centro*, 389 F.3d at 1010); *see also, e.g.*, *Pac. Frontier* v. *Pleasant Grove City*, 414 F.3d 1221, 1237 (10th Cir. 2005) ("Vindicating First Amendment freedoms is clearly in the public interest."). Furthermore, any interest of Defendants in uniform application of the mandate "is … undermined by the creation of exemptions for certain religious organizations and employers with grandfathered health insurance plans and a temporary enforcement safe harbor for non-profit organizations." *Newland*, slip op. at 9.

CONCLUSION

Plaintiffs respectfully ask the Court to enter a preliminary injunction against Defendants in accordance with the relief sought in Plaintiffs' Complaint.

Respectfully submitted this 12th day of September, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed through the Court's ECF filing system on September 12, 2012, and that a copy was served via first-class mail, postage prepaid, on the following:

Eric Holder
United States Attorney General
950 Pennsylvania Ave. NW
Washington, DC 20530

/s/ Charles E. Geister III
Charles E. Geister III

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge John L. Kane

Civil Action No. 1:12-cv-1123-JLK

WILLIAM NEWLAND;
PAUL NEWLAND;
JAMES NEWLAND;
CHRISTINE KETTERHAGEN;
ANDREW NEWLAND; and
HERCULES INDUSTRIES, INC., a Colorado corporation;

Plaintiffs,

v.

KATHLEEN SEBELIUS, in her official capacity as Secretary of the United States Department of Health and Human Services;
HILDA SOLIS, in her official capacity as Secretary of the United States Department of Labor;
TIMOTHY GEITHNER, in his official capacity as Secretary of the United States Department of the Treasury;
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES;
UNITED STATES DEPARTMENT OF LABOR;
UNITED STATED DEPARTMENT OF THE TREASURY;

Defendants.

ORDER

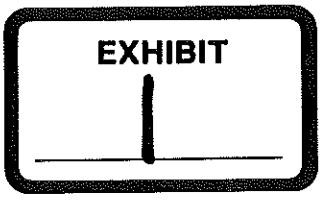
Kane, J.

This matter is currently before me on Plaintiffs' Motion for Preliminary Injunction (doc. 5). Based on the forthcoming discussion, Plaintiffs' motion is GRANTED.

BACKGROUND

The Patient Protection and Affordable Care Act

Signed into law on March 23, 2010, the Patient Protection and Affordable Care Act ("ACA"), Pub. L. No. 111-148, 124 Stat. 119 (2010), instituted a variety of healthcare reforms.



Among its many provisions, it requires most U.S. citizens and legal residents to have health insurance, creates state-based health insurance exchanges, and requires employers with fifty or more full-time employees to offer health insurance.[1] *Id.* The ACA also implemented a series of provisions aimed at insuring minimum levels of health care coverage.[2] Most relevant to the instant suit, the ACA requires group health plans to provide no-cost coverage for preventive care and screening for women. 42 U.S.C. § 300gg-13(a)(4).[3]

Unlike some other provisions of the ACA, however, the preventive care coverage mandate does not apply to certain healthcare plans existing on March 23, 2010.[4] *See* Interim

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[1] In a recent decision, the Supreme Court upheld the constitutionality of the so-called individual mandate, but invalidated the portion of the Affordable Care Act threatening loss of existing Medicaid funding if a state declines to expand its Medicaid programs. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, __ U.S. __; 183 L. Ed. 2d 450 (June 28, 2012).

[2] Termed the "Patient's Bill of Rights" these provisions require health plans to: provide coverage to persons with pre-existing conditions, protect a patient's choice of doctors, allow adults under the age of twenty-six to maintain coverage under their parent's health plan, prohibit annual and lifetime limits on most healthcare benefits, and end pre-existing condition exclusions for children under the age of nineteen. *See* Patient's Bill of Rights *available at* http://www.healthcare.gov/law/features/rights/bill-of-rights/index.html (last viewed on July 27, 2012). As discussed *infra* at n.4, not all health plans are required to meet these conditions.

[3] The ACA did not, however, specifically delimit the contours of preventive care. Instead, it delegated that responsibility to the Health Resources and Services Administration ("HRSA"). On August 1, 2011, HRSA adopted Required Health Plan Coverage Guidelines that defined the scope of women's preventive services for purposes of the ACA coverage mandate. *See* HRSA, Women's Preventive Services: Required Health Plan Coverage Guidelines *available at* http://www.hrsa.gov/womensguidelines/ (last visited July 27, 2012). The HRSA guidelines include, among other things, "the full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity." *Id.*

[4] Numerous provisions of the ACA apply to grandfathered health plans: the prohibition on pre-existing condition exclusions (group health plans only), the prohibition on excessive waiting periods (both group and individual health plans), the prohibition on lifetime (both) and annual (group only) benefit limits, the prohibition on rescissions (both), and the extension of dependent care coverage (both) to name a few. 75 Fed. Reg. at 34542. For a comprehensive

Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 34538,34540 (June 17, 2010). This gap in the preventive care coverage mandate is significant. According to government estimates, 191 million Americans belong to plans which may be grandfathered under the ACA. *Id.* at 34550. Although there are many requirements for maintaining grandfathered status, *see* 26 C.F.R. § 54.9815-1251T(g), if those requirements are met a plan may be grandfathered for an indefinite period of time.

In addition to grandfathering under the ACA, the preventive care guidelines exempt certain religious employers from any requirement to cover contraceptive services.[5] *See* Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 76 Fed. Reg. 46621 (Aug. 3, 2011). The guidelines also contain a temporary enforcement "safe-harbor" for plans sponsored by certain non-profit organizations with religious objections to contraceptive coverage

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summary of the applicability of ACA provisions to grandfathered health plans, see Application of the New Health Reform Provisions of Part A of Title XXVII of the PHS Act to Grandfathered Plans, *available at* http://www.dol.gov/ebsa/pdf/grandfatherregtable.pdf. (last visited July 26, 2012).

[5] In order to qualify as a "religious employer" eligible for this exemption, an employer must meet the following criteria:

> (1) The inculcation of religious values is the purpose of the organization.
>
> (2) The organization primarily employs persons who share the religious tenets of the organization.
>
> (3) The organization serves primarily persons who share the religious tenets of the organization.
>
> (4) The organization is a non-profit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

76 Fed. Reg. 46621, 46626 (Aug. 3, 2011); *See* 77 Fed. Reg. 8725 (Feb. 15, 2012).

that do not qualify for the religious employer exemption. *See* Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act 77 Fed. Reg. 8725, 8726-8727 (Feb. 15, 2012). The preventive care guidelines take effect on August 1, 2012.

Hercules Industries, Inc.

Plaintiff Hercules Industries, Inc. is a Colorado s-corp engaged in the manufacture and distribution of heating, ventilation, and air conditioning ("HVAC") products and equipment. Hercules is owned by siblings William, Paul and James Newland and Christine Ketterhagen, who also comprise the company's Board of Directors. Additionally, William Newland serves as President of the company and his son, Andrew Newland serves as Vice President.[6]

Although Hercules is a for-profit, secular employer, the Newlands adhere to the Catholic denomination of the Christian faith. According to the Newlands, "they seek to run Hercules in a manner that reflects their sincerely held religious beliefs" Amended Complaint (doc. 19) at ¶ 2. Thus, for the past year and a half the Newlands have implemented within Hercules a program designed to build their corporate culture based on Catholic principles. *Id.* at ¶ 36. Hercules recently made two amendments to its articles of incorporation, which reflect the role of religion in its corporate governance: (1) it added a provision specifying that its primary purposes are to be achieved by "following appropriate religious, ethical or moral standards," and (2) it added a provision allowing members of its board of directors to prioritize those "religious, ethical or moral standards" at the expense of profitability. *Id.* at ¶ 112. Furthermore, Hercules has donated

[6] Throughout this opinion, I will refer to William Newland, Paul Newland, James Newland, Christine Ketterhagen, and Andrew Newland as the "Newlands."

significant amounts of money to Catholic organizations and causes. *Id.* at ¶ 35.

According to Plaintiffs, Hercules maintains a self-insured group plan for its employees "[a]s part of fulfilling their organizational mission and Catholic beliefs and commitments." *Id.* at ¶¶ 37. Significantly, because the Catholic church condemns the use of contraception, Hercules self-insured plan does not cover abortifacent drugs, contraception, or sterilization. *Id.* at ¶ 41.

Hercules' health insurance plan is not "grandfathered" under the ACA. Furthermore, notwithstanding the Newlands' religious beliefs, as a secular, for-profit corporation, Hercules does not qualify as a "religious employer" within the meaning of the preventive care regulations. Nor may it seek refuge in the enforcement "safe harbor." Accordingly, Hercules will be required to either include no-cost coverage for contraception in its group health plan or face monetary penalties. Faced with a choice between complying with the ACA or complying with their religious beliefs, Plaintiffs filed the instant suit challenging the women's preventive care coverage mandate as violative of RFRA, the First Amendment, the Fifth Amendment, and the Administrative Procedure Act.

Believing the alleged injury to their constitutional and statutory rights to be imminent, Plaintiffs filed the instant Motion for Preliminary Injunction.

DISCUSSION

A preliminary injunction is an extraordinary remedy; accordingly, the right to relief must be clear and unequivocal. *See, e.g., Flood v. ClearOne Commc'ns, Inc.*, 618 F.3d 1110, 1117 (10th Cir. 2010). To meet this burden, a party seeking a preliminary injunction must show: (1) a likelihood of success on the merits, (2) a threat of irreparable harm, which (3) outweighs any harm to the non-moving party, and that (4) the injunction would not adversely affect the public

interest. *See, e.g., Awad v. Ziriax*, 670 F.3d 1111, 1125 (10th Cir. 2012). Although this inquiry is, on its face, relatively straightforward, there are a variety of exceptions. If the injunction will (1) alter the status quo, (2) mandate action by the defendant, or (3) afford the movant all the relief that it could recover at the conclusion of a full trial on the merits, the movant must meet a heightened burden. *See O Centro Espirita Beneficente Uniao do Vegetal v. Ashcroft*, 389 F.3d 973, 975 (10th Cir. 2004) (en banc), aff'd and remanded, *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006).

In determining whether an injunction falls into one of these "disfavored" categories, courts often focus on whether the requested injunctive relief will alter the status quo. The "status quo" is "the last uncontested status between the parties which preceded the controversy until the outcome of the final hearing." *Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 269 F.3d 1149, 1155 (10th Cir. 2001). In making this determination, however, I must look beyond the parties' legal rights, focusing instead on the reality of the existing status and relationship between the parties. *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1260 (10th Cir. 2005). If the requested relief would either preserve or restore the relationship and status existing ante bellum, the injunction does not alter the status quo.

This determination is not, however, necessarily dispositive. An injunction restoring the status quo ante bellum may require action on behalf of the nonmovant. Such an injunction, one which "affirmatively require[s] the nonmovant to act in a particular way," is mandatory and disfavored. *Id.* at 1261.

Although I follow the Tenth Circuit's guidance in determining whether Plaintiffs seek to disturb the status quo or require affirmative action by Defendants, I am careful to avoid

uncritical adherence to the "status quo-formula" and the "mandatory/prohibitory formulation." In making this determination, I must be mindful of "the fundamental purpose of preliminary injunctive relief under our Rules of Civil Procedure, which is 'to preserve the relative positions of the parties until a trial on the merits can be held.'" *Bray v. QFA Royalties, LLC*, 486 F. Supp. 2d 1237, 1243-44 (D. Colo. 2007) (citing *O Centro*, 389 F.3d at 999-1001 (Seymour, C.J., concurring)).

Before the instigation of this lawsuit, Plaintiffs maintained an employee insurance plan that excluded contraceptive coverage. Although Defendants have passed a regulation requiring Plaintiffs to include such coverage in their coverage for the plan-year beginning on November 1, 2012, that regulation, as it applies to Plaintiffs, has not yet taken effect. Should the requested injunction enter, Defendants will be enjoined from enforcing the preventive care coverage mandate against Plaintiffs pending the outcome of this suit. The status quo will be preserved, and Defendants will not be required to take any affirmative action.

Because Plaintiffs do not seek a "disfavored" injunction, I must consider whether Plaintiffs are entitled to rely on an altered burden of proof. *Cf. O Centro*, 389 F.3d at 976. If the equities tip strongly in their favor, Plaintiffs "may meet the requirement for showing success on the merits by showing that questions going to the merits are so serious, substantial, difficult, and doubtful as to make the issue ripe for litigation and deserving of more deliberate investigation."[7]

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[7] Although some courts in this district have questioned the continued validity of this relaxed likelihood-of-success-on-the-merits standard in light of the Supreme Court's decision in *Winter v. Natural Resource Defense Council, Inc.*, 555 U.S. 7, 20 (2008) (holding that a plaintiff seeking a preliminary injunction "must establish that he is likely to succeed on the merits"), because the Tenth Circuit has continued to refer to this relaxed standard I assume it still governs the issuance of preliminary injunctions in this circuit. *See RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1209 n.3 (10th Cir. 2009).

Okla. ex rel. Okla. Tax Comm'n v. Int'l Registration Plan, Inc., 455 F.3d 1107, 1113 (10th Cir. 2006).

Accordingly, I begin by considering the equities before turning to Plaintiffs' likelihood of success on the merits.

1. Irreparable Harm

Although it is well-established that the potential violation of Plaintiffs' constitutional and RFRA rights threatens irreparable harm, *see Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001), Plaintiffs must also establish that "the injury complained of is of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm." *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (emphasis in original). Imminence does not, however, require immediacy. Plaintiffs need only demonstrate that absent a preliminary injunction, "[they] are likely to suffer irreparable harm before a decision on the merits can be rendered." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (quoting 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2948.1, p. 139 (2d ed. 1995)).

Absent injunctive relief, Plaintiffs will be required to provide FDA-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity as part of their employee insurance plan. Per the terms of the preventive care coverage mandate, that coverage must begin on the start date of the first plan year following the effective date of the regulations, November 1, 2012. Defendants argue this harm, three months in the future, is not sufficiently imminent to justify injunctive relief. In light of the extensive planning involved in preparing and providing its employee insurance plan, and

the uncertainty that this matter will be resolved before the coverage effective date, Plaintiffs have adequately established that they will suffer imminent irreparable harm absent injunctive relief. This factor strongly favors entry of injunctive relief.

2. Balancing of Harms

I must next weigh the irreparable harm faced by Plaintiffs against the harm to Defendants should an injunction enter. Should an injunction enter, Defendants will be prevented from "enforcing regulations that Congress found it in the public interest to direct that agency to develop and enforce." *Cornish v. Dudas*, 540 F. Supp. 2d 61, 61 (D.D.C. 2008).

This harm pales in comparison to the possible infringement upon Plaintiffs' constitutional and statutory rights. This factor strongly favors entry of injunctive relief.

3. Public Interest

Defendants argue that entry of the requested injunction is contrary to the public interest, because it would "undermine [their] ability to effectuate Congress's goals of improving the health of women and children and equalizing the coverage of preventive services for women and men so that women who choose to do so can be part of the workforce on an equal playing field with men." Defendants' Response (doc. 26) at73. This asserted interest is, however, undermined by the creation of exemptions for certain religious organizations and employers with grandfathered health insurance plans and a temporary enforcement safe harbor for non-profit organizations.

These interests are countered, and indeed outweighed, by the public interest in the free exercise of religion. As the Tenth Circuit has noted, "there is a strong public interest in the free

exercise of religion even where that interest may conflict with [another statutory scheme]." *O Centro*, 389 F.3d at 1010. Accordingly, the public interest favors entry of an injunction in this case.

On balance, the threatened harm to Plaintiffs, impingement of their right to freely exercise their religious beliefs, and the concommittant public interest in that right srongly favor the entry of injunctive relief. Although the less rigorous standard for preliminary injunctions is not applied when "a preliminary injunction seeks to stay governmental action taken in the public interest pursuant to a statutory or regulatory scheme," *Aid for Women v. Foulston*, 441 F.3d 1101, 1115 (10th Cir. 2006), the government's creation of numerous exceptions to the preventive care coverage mandate has undermined its alleged public interest.[8] Accordingly, I find the general rule disfavoring the relaxed standard inapplicable. Plaintiffs need only establish that their challenge presents "questions going to the merits . . . so serious, substantial, difficult, and doubtful as to make the issue ripe for litigation and deserving of more deliberate investigation." *Okla. Tax Comm'n*, 455 F.3d at 1113.

4. Likelihood of Success on the Merits

Plaintiffs raise a variety of constitutional and statutory challenges. Because Plaintiffs' RFRA challenge provides adequate grounds for the requested injunctive relief, I decline to address their challenges under the Free Exercise, Establishment and Freedom of Speech Clauses of the First Amendment. *See, e.g., United States v. Hardeman*, 297 F.3d 1116, 1135-36 (10th Cir. 2002) (en banc).

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[8] *See* discussion *supra* at pp. 2-4 and *infra* at p. 14-15.

Passed in 1993, the Religious Freedom Restoration Act ("RFRA") sought to "restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened." 42 U.S.C. § 2000bb(b). Although unconstitutional as applied to the states, *see City of Boerne v. Flores*, 521 U.S. 507 (1997), it remains constitutional as applied to the federal government. *See United States v. Wilgus*, 638 F.3d 1274, 1279 (10th Cir. 2011).

Under RFRA, the government may not "substantially burden a person's exercise of religion even if the burden results from a rule of general applicability." 42 U.S.C. § 2000bb-1(a). This general prohibition is not, however, without exception. The government may justify a substantial burden on the free exercise of religion if the challenged law: "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Id.* at § 2000bb-1(b). The initial burden is borne by the party challenging the law. Once that party establishes that the challenged law substantially burdens her free exercise of religion, the burden shifts to the government to justify that burden. The nature of this preliminary injunction proceeding does not alter these burdens. *Gonzales*, 546 U.S. at 429. Thus, I must first consider whether Plaintiffs have demonstrated that the preventive care coverage mandate substantially burdens their free exercise of religion. If so, I must then consider whether the government has demonstrated that the preventive care coverage mandate is the least restrictive means to achieve a compelling interest.

Substantial Burden of Free Exercise

Plaintiffs argue that providing contraception coverage violates their sincerely held

religious beliefs. Although the government does not challenge the sincerity of the Newlands' religious beliefs, it argues that Plaintiffs have failed to demonstrate a substantial burden on their free exercise of religion. This argument relies upon two key premises. First, the government asserts that the burden of providing insurance coverage is borne by Hercules. Second, the government argues that as a for-profit, secular employer, Hercules cannot engage in an exercise of religion. Accordingly, the argument concludes, the preventive care coverage mandate cannot burden Hercules' free exercise of religion.[9] Plaintiffs counter, arguing that there exists no law forbidding a corporation from operating according to religious principles.

These arguments pose difficult questions of first impression. Can a corporation exercise religion? Should a closely-held subchapter-s corporation owned and operated by a small group of individuals professing adherence to uniform religious beliefs be treated differently than a publicly held corporation owned and operated by a group of stakeholders with diverse religious beliefs? Is it possible to "pierce the veil" and disregard the corporate form in this context? What is the significance of the pass-through taxation applicable to subchapter-s corporations as it pertains to this analysis? These questions merit more deliberate investigation.

Even if, upon further examination, Plaintiffs are able to demonstrate a substantial burden on their free exercise of religion, however, the government may justify its application of the preventive care coverage mandate by demonstrating that application of that mandate to Plaintiffs

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[9] In the alternative, the government argues that because Plaintiffs routinely contribute to other schemes that violate the religious beliefs alleged here, the preventive care coverage mandate does not substantially burden Plaintiffs' free exercise of religion. This argument requires impermissible line drawing, and I reject it out of hand. *See Thomas v. Review Bd. of Ind. Emp't Sec.*, 450 U.S. 707, 715 (1981).

is the least restrictive means of furthering a compelling interest.

Compelling Interest

In order to justify a substantial burden on Plaintiffs' free exercise of religion, the government must show that its application of the preventive carecoverage mandate to Plaintiffs furthers "interests of the highest order." *Hardeman*, 297 F.3d at 1127. It is well-settled that the interest asserted in this case, the promotion of public health, is a compelling government interest. *See Buchwald v. Univ. of N.M. Sch. of Med.*, 159 F.3d 487, 498 (10th Cir. 1998). The government argues that the preventive care coverage mandate, as applied to Plaintiffs and all similarly situated parties, furthers this compelling interest.

Assuming, *arguendo*, that application of the preventive care coverage mandate to Plaintiffs and all similarly situated parties furthers a compelling government interest,[10] that argument does not justify a substantial burden on Plaintiffs' free exercise of religion: "RFRA requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law to the person – the particular claimant whose sincere exercise of religion is being substantially burdened." *Gonzales*, 546 U.S. at 430-31.

I do not mean to suggest that the government may not establish a compelling interest in the uniform application of a particular program. To make such a showing, however, the government must "offer[] evidence that granting the requested religious accommodations would seriously compromise its ability to administer this program." *Id.* at 435. Any such argument is

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[10] Plaintiffs strenuously challenge whether the preventive care coverage mandate actually furthers the promotion of public health. I need not address that argument to resolve the instant motion, and I decline to do so.

undermined by the existence of numerous exemptions to the preventive care coverage mandate. In promulgating the preventive care coverage mandate, Congress created significant exemptions for small employers and grandfathered health plans.[11] [12] 26 U.S.C. § 4980H(c)(2) (exempting from health care provision requirement employers of less than fifty full-time employees); 42 U.S.C. § 18011 (grandfathering of existing health care plans). Even Defendants created a regulatory exemption to the contraception mandate. 76 Fed. Reg. 46621, 46626 (Aug. 3, 2011) (exempting certain religious employers from the contraception requirement of the preventive care coverage mandate).

"[A] law cannot be regarded as protecting an interest of the highest order when it leaves appreciable damage to that supposedly vital interest unprohibited." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993); *see also United States v. Friday*, 525 F.3d 938, 958 (10th Cir. 2008). The government has exempted over 190 million health plan

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[11] The government's attempt to characterize grandfathering as "phased implementation" is unavailing. As noted above, health plans may retain their grandfathered status indefinitely. Most damaging to the government's alleged compelling interest, even though Congress required grandfathered health plans to comply with certain provisions of the ACA, it specifically exempted grandfathered health plans from complying with the preventive care coverage mandate. *See* 42 U.S.C. § 18011(a)(3-4) (specifying those provisions of the ACA that apply to grandfathered health plans).

[12] The government argues that because these provisions are generally applicable, and not specifically limited to the preventive services coverage regulations, they are not exemptions from the preventive care coverage mandate. This is a distinction without substance. By exempting employers from providing health care coverage, these provisions exempt those employers from providing preventative health care coverage to women. If the government has a compelling interest in ensuring no-cost provision of preventative health coverage to women, that interest is compromised by exceptions allowing employers to avoid providing that coverage – whether broadly or narrowly crafted.

participants and beneficiaries from the preventive care coverage mandate;[13] this massive exemption completely undermines any compelling interest in applying the preventive care coverage mandate to Plaintiffs.[14]

Least Restrictive Means

Even if the government were able to establish a compelling interest in applying the preventive care coverage mandate to Plaintiffs, it must also demonstrate that there are no feasible less-restrictive alternatives. *Wilgus*, 638 F.3d at 1289. The government need not tilt at windmills; it need only refute alternatives proposed by Plaintiffs. *Id.*

Plaintiffs propose one alternative, government provision of free birth control, that could be achieved by a variety of methods: creation of a contraception insurance plan with free enrollment, direct compensation of contraception and sterilization providers, creation of a tax credit or deduction for contraceptive purchases, or imposition of a mandate on the contraception manufacturing industry to give its items away for free. Defendants argue Plaintiffs' "misunderstand the nature of the 'least restrictive means' inquiry." Brief in Opposition (doc. 26) at 43. According to Defendants, this inquiry should be limited to whether Plaintiffs and other similarly situated parties could be exempted without damaging Defendants' compelling interest.

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[13] Even if, as is estimated under the government's high-end estimate, 69% of health plans lose their grandfathered status by the end of 2013, millions health plan participants and beneficiaries will continue to be exempted from the preventive care coverage mandate. *See* 75 Fed. Reg. 34538, 34553.

[14] To the extent the government argues creating an exemption for Plaintiffs threatens to undermine the preventive care coverage mandate, that argument is inconsistent with RFRA and irrelevant in this context. *See Gonzales*, 546 U.S. at 436 (rejecting "slippery slope" argument as inconsistent with RFRA).

It is, however, not Plaintiffs but Defendants who misunderstand the least restrictive means inquiry. Defendants need not refute every conceivable alternative, but they "must refute the alternative schemes offered by the challenger."[15] *Wilgus*, 638 F.3d at 1289.

Despite their categorical argument, Defendants attempt to refute Plaintiffs' proposed alternative. First, Defendants argue that because Plaintiffs' alternative "would impose considerable new costs and other burdens on the Government and are otherwise impractical," they should be rejected as not "feasible" or "plausible." Brief in Opposition (doc. 26) at 44. Although a showing of impracticality is sufficient to refute the adequacy of a proposed alternative, Defendants have failed to make such a showing in this case. As Plaintiffs note, "the government already provides free contraception to women." Reply Brief in Support (doc. 27) at 38.

Defendants also argue Plaintiffs' alternative would not adequately advance the government's compelling interests. They acknowledge that Plaintiffs' alternative would achieve the purpose of providing contraceptive services to women with no cost sharing, but argue that Plaintiffs' alternative will not "ensur[e] that women will face minimal logistical and administrative obstacles to receiving coverage of their care." Brief in Opposition (doc. 26) at 45. Although Plaintiffs argue that this amounts to a redefinition of Defendants' compelling interest,

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[15] Furthermore, both parties impermissibly expand the scope of this determination. As noted above, my inquiry is limited to the parties before me; I do not consider all other "similarly situated parties." To the extent Plaintiffs' alternative would apply to other parties, it is overinclusive. Because the parties frame this discussion, however, I analyze the alternative as presented by Plaintiffs and responded to by Defendants.

it is instead a logical corollary thereto.[16] Nonetheless, Defendants have failed to adduce facts establishing that government provision of contraception services will necessarily entail logistical and administrative obstacles defeating the ultimate purpose of providing no-cost preventive health care coverage to women. Once again, the current existence of analogous programs heavily weighs against such an argument.

Defendants bear the burden of demonstrating that refusing to exempt Plaintiffs from the preventive care coverage mandate is the least restrictive means of furthering their compelling interest. Given the existence of government programs similar to Plaintiffs' proposed alternative, the government has failed to meet this burden.

Conclusion

The balance of the equities tip strongly in favor of injunctive relief in this case. Because this case presents "questions going to the merits . . . so serious, substantial, difficult, and doubtful as to make the issue ripe for litigation and deserving of more deliberate investigation," I find it appropriate to enjoin the implementation of the preventive care coverage mandate as applied to Plaintiffs. Accordingly,

Defendants, their agents, officers, and employees, and their requirements that Plaintiffs provide FDA-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity, are ENJOINED from any application or enforcement thereof against Plaintiffs, including the substantive requirement imposed in 42

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[16] To be clear, I do not believe Defendants have sufficiently demonstrated a compelling interest in enforcing the preventive care coveragemandate against Plaintiffs. For purposes of my analysis under "least restrictive means" prong of RFRA, however, I assume the existence of such an interest.

U.S.C. § 300gg-13(a)(4), the application of the penalties found in 26 U.S.C. §§ 4980D & 4980H and 29 U.S.C. § 1132, and any determination that the requirements are applicable to Plaintiffs.

Pursuant to Fed. R. Civ. P. Rule 65(c), Plaintiffs shall post a $100.00 bond as security for any costs and damages that may be sustained by Defendants in the event they have been wrongfully enjoined or restrained.

Such injunction shall expire three months from entry of an order on the merits of Plaintiffs' challenge. In order to expedite the resolution of this case, the parties shall file a Joint Case Management Plan on or before August 27, 2012.

And, finally, I take this opportunity to emphasize the *ad hoc* nature of this injunction. The government's arguments are largely premised upon a fear that granting an exemption to Plaintiffs will necessarily require granting similar injunction to all other for-profit, secular corporations voicing religious objections to the preventive care coverage mandate. This injunction is, however, premised upon the alleged substantial burden on Plaintiffs' free exercise of religion – not to any alleged burden on any other party's free exercise of religion. It does not enjoin enforcement of the preventive care coverage mandate against any other party.

Dated: July 27, 2012

BY THE COURT:

/s/ John L. Kane
Senior U.S. District Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

HOBBY LOBBY STORES, INC., MARDEL, INC., DAVID GREEN, BARBARA GREEN, STEVE GREEN, MART GREEN, AND DARSEE LETT, Plaintiffs, v. KATHLEEN SEBELIUS, Secretary of the United States Department of Health and Human Services, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, HILDA SOLIS, Secretary of the United States Department of Labor, UNITED STATES DEPARTMENT OF LABOR, TIMOTHY GEITHNER, Secretary of the United States Department of the Treasury, and UNITED STATES DEPARTMENT OF THE TREASURY, Defendants.	Case No. CIV-12-1000-HE

NOTICE OF RELATED OR COMPANION CASES

Plaintiffs submit the following list of 27 other cases also challenging the validity of the federal regulation at issue in this matter, on similar grounds. These cases, however, involve the application of the United States Constitution and federal statutes to different sets of facts. Plaintiffs, therefore, do not believe that they are "related" or "companion" cases as defined under Local Civil Rule 3.7(a).

District of Columbia Circuit

1. *Belmont Abbey Coll.* v. *Sebelius*, No. 1:11-cv-01989 (D.D.C.), Judge James E. Boasberg;
2. *Roman Catholic Archbishop of Washington* v. *Sebelius*, No. 1:12-cv-815 (D.D.C.), Judge Amy Berman Jackson;
3. *Wheaton College* v. *Sebelius*, No. 1:12-cv-01169 (D.D.C), Judge Ellen Segal Huvelle; Court of Appeals Docket 12-5273 (D.C. Cir);

Second Circuit

4. *Priests for Life* v. *Sebelius*, No. 1:12-cv-00753 (E.D.N.Y.), Judge Ramon E. Reyes, Jr.;
5. *Roman Catholic Archdiocese of NY* v. *Sebelius*, No. 1:12-cv-2542 (E.D.N.Y.), Judge Brian M. Cogan;

Third Circuit

6. *Geneva Coll.* v. *Sebelius*, No. 2:12-cv-00207 (W.D. Pa.), Judge Joy Flowers Conti;
7. *Rev. Donald W. Trautman* v. *Sebelius*, No. 1:12-cv-123 (W.D. Pa.), Judge Sean J. McLaughlin;
8. *Most Rev. David A. Zubik* v. *Sebelius*, No. 2:12-cv-676 (W.D. Pa.), Judge Terrence F. McVerry;

Fifth Circuit

9. *Louisiana Coll.* v. *Sebelius*, No. 1:12-cv-00463 (W.D. La.), Judge James D. Kirk;
10. *Roman Catholic Diocese of Dallas* v. *Sebelius*, No. 3:12-cv-1589 (N.D. Tex.), Judge Jane J. Boyle;
11. *Roman Catholic Diocese of Fort Worth* v. *Sebelius*, No. 4:12-cv-314 (N.D. Tex.), Judge Terry R. Means;
12. *Roman Catholic Diocese of Biloxi* v. *Sebelius*, No. 1:12-cv-158 (S.D. Miss.), Judge Robert H. Walker;

Sixth Circuit

13. *Legatus* v. *Sebelius*, 2:12-cv-12061 (E.D. Mich.), Judge Michael J. Hluchaniuk;
14. *Franciscan Univ. of Steubenville* v. *Sebelius*, No. 2:12-cv-440 (S.D. Ohio), Judge Mark R. Abel;

Seventh Circuit

15. *Univ. of Notre Dame* v. *Sebelius*, No. 3:12-cv-00253 (N.D. Ind.), Judge Christopher A. Nuechterlein;
16. *Diocese of Fort Wayne-South Bend, Inc.* v. *Sebelius*, No. 1:12-cv-159 (N.D. Ind.), Judge Roger B. Cosbey;
17. *Catholic Diocese of Peoria* v. *Sebelius*, No. 1:12-cv-1276 (C.D. Ill.), Judge Byron G. Cudmore;
18. *Conlon* v. *Sebelius*, No. 1:12-cv-3932 (N.D. Ill.), Judge John W. Darrah;
19. *Triune Health Group* v. *Sebelius*, No. 1:12-cv-6756 (N.D. Ill.), Judge Amy J. St. Eve;
20. *Grace Schools* v. *Sebelius*, No. 3:12-cv-00459 (N.D. Ind.), Judge Jon E. DeGuilio;

Eighth Circuit

21. *State of Nebraska* v. *HHS*, No. 4:12-cv-03035 (D. Neb.), Judge Cheryl R. Zwart;
22. *O'Brien* v. *HHS*, No. 4:12-cv-00476 (E.D. Mo.), Judge Carol E. Jackson;
23. *Archdiocese of St. Louis* v. *Sebelius*, No. 4:12-cv-924 (E.D. Mo.), Judge John A. Ross;

Tenth Circuit

24. *Colorado Christian Univ.* v. *Sebelius*, No. 11-cv-03350 (D. Colo.), Judge Boyd N. Boland;
25. *Newland* v. *Sebelius*, No. 1:12-cv-01123 (D. Colo.), Judge John L. Kane;

Eleventh Circuit

26. *Eternal Word Television Network, Inc.* v. *Sebelius*, No. 2:12-cv-00501 (N.D. Ala.), Judge Sharon Lovelace Blackburn;
27. *Ave Maria University* v. *Sebelius*, No. 2:12-cv-00088 (M.D. Fl.), Judge Sheri Polster Chappell.

Respectfully submitted this 12th day of September, 2012.

/s/ Charles E. Geister III
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ATTORNEYS FOR PLAINTIFFS

- And -

S. Kyle Duncan, LA Bar No. 25038
(*Motion for Pro Hac Vice pending*)
Eric S. Baxter, D.C. Bar No. 479221
(*Motion for Pro Hac Vice pending*)
Lori Halstead Windham, D.C. Bar No. 501838
(*Motion for Pro Hac Vice pending*)
THE BECKET FUND FOR RELIGIOUS LIBERTY
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed through the Court's ECF filing system on September 12, 2012, and that a copy was served via first-class mail, postage prepaid, on the following:

Eric Holder
United States Attorney General
950 Pennsylvania Ave. NW
Washington, DC 20530

/s/ Charles E. Geister III
Charles E. Geister III

AO440(Rev.12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Oklahoma

HOBBY LOBBY STORES, INC., MARDEL, INC., DAVID GREEN, BARBARA GREEN, STEVE GREEN, MART GREEN, and DARSEE LETT,

Plaintiff(s),

v.

KATHLEEN SEBELIUS, Secretary of the United States Department of Health and Human Services, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, HILDA SOLIS, Secretary of the United States Department of Labor, UNITED STATES DEPARTMENT OF LABOR, TIMOTHY GEITHNER, Secretary of the United States Department of the Treasury, and UNITED STATES DEPARTMENT OF THE TREASURY,

Defendant(s).

Case No. CIV-12-1000-HE

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Hilda Solis, Secretary
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) - or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) - you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

S. Kyle Duncan
The Becket Fund for Religious Liberty
3000 K Street NW, Suite 220
Washington, D.C. 20007

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

UNITED STATES DISTRICT COURT · WESTERN DISTRICT OF OKLAHOMA

SUMMONS ISSUED:

9:02 am, Sep 12, 2012

ROBERT D. DENNIS, Clerk

By: Pamela L. Weeks
Deputy Clerk

Signed and sealed by the Clerk of the Court or Deputy Clerk.

AO440(Rev.12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Oklahoma

HOBBY LOBBY STORES, INC., MARDEL, INC., DAVID GREEN, BARBARA GREEN, STEVE GREEN, MART GREEN, and DARSEE LETT,

Plaintiff(s),

v.

KATHLEEN SEBELIUS, Secretary of the United States Department of Health and Human Services, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, HILDA SOLIS, Secretary of the United States Department of Labor, UNITED STATES DEPARTMENT OF LABOR, TIMOTHY GEITHNER, Secretary of the United States Department of the Treasury, and UNITED STATES DEPARTMENT OF THE TREASURY,

Defendant(s).

Case No. CIV-12-1000-HE

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Kathleen Sebelius, Secretary
U.S. Department of Health & Human Services
200 Independence Avenue SW
Washington, DC 20201

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) - or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) - you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

S. Kyle Duncan
The Becket Fund for Religious Liberty
3000 K Street NW, Suite 220
Washington, D.C. 20007

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

SUMMONS ISSUED:

9:03 am, Sep 12, 2012

ROBERT D. DENNIS, Clerk

By: Pamela L. Weeks
Deputy Clerk

Signed and sealed by the Clerk of the Court or Deputy Clerk.

UNITED STATES DISTRICT COURT

for the

Western District of Oklahoma

HOBBY LOBBY STORES, INC., MARDEL, INC., DAVID GREEN, BARBARA GREEN, STEVE GREEN, MART GREEN, and DARSEE LETT,

Plaintiff(s),

v.

KATHLEEN SEBELIUS, Secretary of the United States Department of Health and Human Services, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, HILDA SOLIS, Secretary of the United States Department of Labor, UNITED STATES DEPARTMENT OF LABOR, TIMOTHY GEITHNER, Secretary of the United States Department of the Treasury, and UNITED STATES DEPARTMENT OF THE TREASURY,

Defendant(s).

Case No. CIV-12-1000-HE

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Timothy Geithner, Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) - or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) - you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

S. Kyle Duncan
The Becket Fund for Religious Liberty
3000 K Street NW, Suite 220
Washington, D.C. 20007

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF OKLAHOMA

SUMMONS ISSUED:

9:04 am, Sep 12, 2012

ROBERT D. DENNIS, Clerk

By: Pamela L. Weeks
Deputy Clerk

Signed and sealed by the Clerk of the Court or Deputy Clerk.

AO440(Rev.12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Oklahoma

HOBBY LOBBY STORES, INC., MARDEL, INC., DAVID GREEN, BARBARA GREEN, STEVE GREEN, MART GREEN, and DARSEE LETT,

Plaintiff(s),

v.

KATHLEEN SEBELIUS, Secretary of the United States Department of Health and Human Services, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, HILDA SOLIS, Secretary of the United States Department of Labor, UNITED STATES DEPARTMENT OF LABOR, TIMOTHY GEITHNER, Secretary of the United States Department of the Treasury, and UNITED STATES DEPARTMENT OF THE TREASURY,

Defendant(s).

Case No. CIV-12-1000-HE

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

U.S. Department of Health & Human Services
200 Independence Avenue SW
Washington, DC 20201

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) - or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) - you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

S. Kyle Duncan
The Becket Fund for Religious Liberty
3000 K Street NW, Suite 220
Washington, D.C. 20007

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF OKLAHOMA

SUMMONS ISSUED:

9:05 am, Sep 12, 2012

ROBERT D. DENNIS, Clerk

By: Pamela K. Weeks
Deputy Clerk

Signed and sealed by the Clerk of the Court or Deputy Clerk.

AO440(Rev.12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Oklahoma

HOBBY LOBBY STORES, INC., MARDEL, INC., DAVID GREEN, BARBARA GREEN, STEVE GREEN, MART GREEN, and DARSEE LETT,

Plaintiff(s),

v.

KATHLEEN SEBELIUS, Secretary of the United States Department of Health and Human Services, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, HILDA SOLIS, Secretary of the United States Department of Labor, UNITED STATES DEPARTMENT OF LABOR, TIMOTHY GEITHNER, Secretary of the United States Department of the Treasury, and UNITED STATES DEPARTMENT OF THE TREASURY,

Defendant(s).

Case No. CIV-12-1000-HE

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) - or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) - you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

S. Kyle Duncan
The Becket Fund for Religious Liberty
3000 K Street NW, Suite 220
Washington, D.C. 20007

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

SUMMONS ISSUED:

9:05 am, Sep 12, 2012

ROBERT D. DENNIS, Clerk

By: Pamela L. Weeks
Deputy Clerk

Signed and sealed by the Clerk of the Court or Deputy Clerk.

AO440(Rev.12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Oklahoma

HOBBY LOBBY STORES, INC., MARDEL, INC., DAVID GREEN, BARBARA GREEN, STEVE GREEN, MART GREEN, and DARSEE LETT,

Plaintiff(s),

v.

KATHLEEN SEBELIUS, Secretary of the United States Department of Health and Human Services, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, HILDA SOLIS, Secretary of the United States Department of Labor, UNITED STATES DEPARTMENT OF LABOR, TIMOTHY GEITHNER, Secretary of the United States Department of the Treasury, and UNITED STATES DEPARTMENT OF THE TREASURY,

Defendant(s).

Case No. CIV-12-1000-HE

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) - or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) - you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

S. Kyle Duncan
The Becket Fund for Religious Liberty
3000 K Street NW, Suite 220
Washington, D.C. 20007

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF OKLAHOMA

SUMMONS ISSUED:

9:06 am, Sep 12, 2012

ROBERT D. DENNIS, Clerk

By: Pamela L. Weeks
Deputy Clerk

Signed and sealed by the Clerk of the Court or Deputy Clerk.